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Also, see *Rules* and *Examples* at the close of these Tables.

Length		5 *Inches Wide, Deep, or Thick, — By*																			
ft.	*in.*	5	*in.*	6	*in.*	7	*in.*	8	*in.*	9	*in.*	10	*in.*	11	*in.*	12	*in.*	13	*in.*	14	*in.*
1	—	0	2	0	3	0	3	0	3	0	4	0	4	0	5	0	5	0	5	0	6
2	—	0	4	0	5	0	6	0	7	0	8	0	8	0	9	0	10	0	11	1	0
3	—	0	6	0	8	0	9	0	10	0	11	1	1	1	2	1	3	1	4	1	6
4	—	0	8	0	10	1	0	1	1	1	3	1	5	1	6	1	8	1	10	1	11
5	—	0	10	1	1	1	3	1	5	1	7	1	9	1	11	2	1	2	3	2	5
6	—	1	1	1	3	1	6	1	8	1	11	2	1	2	4	2	6	2	9	2	11
—	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
—	2	0	0	0	0	0	0	0	1	0	1	0	1	0	1	0	1	0	1	0	1
—	3	0	1	0	1	0	1	0	1	0	1	0	1	0	1	0	1	0	1	0	1
—	6	0	1	0	1	0	1	0	2	0	2	0	2	0	2	0	2	0	3	0	3

Length		6 *Inches Wide, Deep, or Thick, — By*																			
ft.	*in.*	6	*in*	7	*in.*	8	*in.*	9	*in.*	10	*in.*	11	*in.*	12	*in.*	13	*in.*	14	*in.*	15	*in.*
1	—	0	3	0	4	0	4	0	5	0	5	0	6	0	6	0	7	0	7	0	8
2	—	0	6	0	7	0	8	0	9	0	10	0	11	1	0	1	1	1	2	1	3
3	—	0	9	0	11	1	0	1	2	1	3	1	5	1	6	1	8	1	9	1	11
4	—	1	0	1	2	1	4	1	6	1	8	1	10	2	0	2	2	2	4	2	6
5	—	1	3	1	6	1	8	1	11	2	1	2	4	2	6	2	9	2	11	3	2
6	—	1	6	1	9	2	0	2	3	2	6	2	9	3	0	3	3	3	6	3	9
—	1	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	1	0	1	0	1
—	2	0	1	0	1	0	1	0	1	0	1	0	1	0	1	0	1	0	1	0	1
—	3	0	1	0	1	0	1	0	1	0	1	0	1	0	2	0	2	0	2	0	2
—	6	0	2	0	2	0	2	0	2	0	3	0	3	0	3	0	3	0	4	0	4

Length		7 *Inches Wide, Deep, or Thick, — By*																			
ft.	*in.*	7	*in.*	8	*in.*	9	*in.*	10	*in.*	11	*in.*	12	*in.*	13	*in.*	14	*in.*	15	*in.*	16	*in.*
1	—	0	4	0	5	0	5	0	6	0	6	0	7	0	8	0	8	0	9	0	9
2	—	0	8	0	9	0	11	1	0	1	1	1	2	1	3	1	4	1	6	1	7
3	—	1	0	1	2	1	4	1	6	1	7	1	9	1	11	2	1	2	2	2	4
4	—	1	4	1	7	1	9	1	11	2	2	2	4	2	6	2	9	2	11	3	1
5	—	1	8	1	11	2	2	2	5	2	8	2	11	3	2	3	5	3	8	3	11
6	—	2	1	2	4	2	8	2	11	3	3	3	6	3	10	4	1	4	5	4	8
—	1	0	0	0	0	0	0	0	0	0	1	0	1	0	1	0	1	0	1	0	1
—	2	0	1	0	1	0	1	0	1	0	1	0	1	0	1	0	1	0	1	0	2
—	3	0	1	0	1	0	1	0	1	0	2	0	2	0	2	0	2	0	2	0	2
—	6	0	2	0	2	0	3	0	3	0	3	0	4	0	4	0	4	0	4	0	5

Length		8 *Inches Wide, Deep or Thick, — By*																	
ft.	*in.*	8 *in.*		9 *in.*		10 *in.*		11 *in.*		12 *in.*		13 *in.*		14 *in.*		15 *in.*		16 *in.*		17 *in.*	
1	—	0	5	0	6	0	7	0	7	0	8	0	9	0	9	0	10	0	11	0	11
2	—	0	11	1	0	1	1	1	3	1	4	1	5	1	7	1	8	1	9	1	11
3		1	4	1	6	1	8	1	10	2	0	2	2	2	4	2	6	2	8	2	10
4		1	9	2	0	2	3	2	5	2	8	2	11	3	1	3	4	3	7	3	9
5		2	3	2	6	2	9	3	1	3	4	3	7	3	11	4	2	4	5	4	9
6	—	2	8	3	0	3	4	3	8	4	0	4	4	4	8	5	0	5	4	5	8
—	1	0	0	0	1	0	1	0	1	0	1	0	1	0	1	0	1	0	1	0	1
—	2	0	1	0	1	0	1	0	1	0	1	0	1	0	2	0	2	0	2	0	2
—	3	0	1	0	2	0	2	0	2	0	2	0	2	0	2	0	3	0	3	0	3
—	6	0	3	0	3	0	3	0	4	0	4	0	4	0	5	0	5	0	5	0	6

Length		9 *Inches Wide, Deep, or Thick, — By*																	
ft.	*in.*	9 *in.*		10 *in.*		11 *in.*		12 *in.*		13 *in.*		14 *in*		15 *in.*		16 *in.*		17 *in.*		18 *in.*	
1	—	0	7	0	8	0	8	0	9	0	10	0	11	0	11	1	0	1	1	1	2
2	—	1	2	1	3	1	5	1	6	1	8	1	9	1	11	2	0	2	2	2	3
3	—	1	8	1	11	2	1	2	3	2	5	2	8	2	10	3	0	3	2	3	5
4	—	2	3	2	6	2	9	3	0	3	3	3	6	3	9	4	0	4	3	4	6
5	—	2	10	3	2	3	5	3	9	4	1	4	5	4	8	5	0	5	4	5	8
6	—	3	5	3	9	4	2	4	6	4	11	5	3	5	8	6	0	6	5	6	9
—	1	0	1	0	1	0	1	0	1	0	1	0	1	0	1	0	1	0	1	0	1
—	2	0	1	0	1	0	1	0	2	0	2	0	2	0	2	0	2	0	2	0	2
—	3	0	2	0	2	0	2	0	2	0	2	0	3	0	3	0	3	0	3	0	3
—	6	0	3	0	4	0	4	0	5	0	5	0	5	0	6	0	6	0	6	0	7

Length		10 *Inches Wide, Deep, or Thick, — By*																	
ft.	*in*	10 *in.*		11 *in.*		12 *in.*		13 *in.*		14 *in.*		15 *in.*		16 *in.*		17 *in.*		18 *in.*		19 *in.*	
1	—	0	8	0	9	0	10	0	11	1	0	1	1	1	1	1	2	1	3	1	4
2	—	1	5	1	6	1	8	1	10	1	11	2	1	2	3	2	4	2	6	2	8
3	—	2	1	2	4	2	6	2	9	2	11	3	2	3	4	3	7	3	9	4	0
4	—	2	9	3	1	3	4	3	7	3	11	4	2	4	5	4	9	5	0	5	3
5	—	3	6	3	10	4	2	4	6	4	10	5	3	5	7	5	11	6	3	6	7
6	—	4	2	4	7	5	0	5	5	5	10	6	3	6	8	7	1	7	6	7	11
—	1	0	1	0	1	0	1	0	1	0	1	0	1	0	1	0	1	0	1	0	1
—	2	0	1	0	2	0	2	0	2	0	2	0	2	0	2	0	2	0	3	0	3
—	3	0	2	0	2	0	3	0	3	0	3	0	3	0	3	0	4	0	4	0	4
—	6	0	4	0	5	0	5	0	5	0	6	0	6	0	7	0	7	0	8	0	8

Length		11 *Inches Wide, Deep, or Thick, — By*																	
ft.	*in.*	11 *in.*		12 *in.*		13 *in.*		14 *in.*		15 *in.*		16 *in.*		17 *in.*		18 *in.*		19 *in.*		20 *in.*	
1	—	0	10	0	11	1	0	1	1	1	2	1	3	1	4	1	5	1	5	1	6
2	—	1	8	1	10	2	0	2	2	2	4	2	5	2	7	2	9	2	11	3	1
3	—	2	6	2	9	3	0	3	3	3	5	3	8	3	11	4	2	4	4	4	7
4	—	3	4	3	8	4	0	4	3	4	7	4	11	5	2	5	6	5	10	6	1
5	—	4	2	4	7	5	0	5	4	5	9	6	1	6	6	6	11	7	3	7	8
6	—	5	1	5	6	6	0	6	5	6	11	7	4	7	10	8	3	8	9	9	2
—	1	0	1	0	1	0	1	0	1	0	1	0	1	0	1	0	1	0	1	0	2
—	2	0	2	0	2	0	2	0	2	0	2	0	2	0	3	0	3	0	3	0	3
—	3	0	3	0	3	0	3	0	3	0	3	0	4	0	4	0	4	0	4	0	5
—	6	0	5	0	6	0	6	0	6	0	7	0	7	0	8	0	8	0	9	0	9

Length		12 *Inches Wide, Deep, or Thick, — By*																	
ft.	*in.*	12 *in.*		13 *in.*		14 *in.*		15 *in.*		16 *in.*		17 *in.*		18 *in.*		19 *in.*		20 *in.*		21 *in.*	
1	—	1	0	1	1	1	2	1	3	1	4	1	5	1	6	1	7	1	8	1	9
2	—	2	0	2	2	2	4	2	6	2	8	2	10	3	0	3	2	3	4	3	6
3	—	3	0	3	3	3	6	3	9	4	0	4	3	4	6	4	9	5	0	5	3
4	—	4	0	4	4	4	8	5	0	5	4	5	8	6	0	6	4	6	8	7	0
5	—	5	0	5	5	5	10	6	3	6	8	7	1	7	6	7	11	8	4	8	9
6	—	6	0	6	6	7	0	7	6	8	0	8	6	9	0	9	6	10	0	10	6
—	1	0	1	0	1	0	1	0	1	0	1	0	1	0	2	0	2	0	2	0	2
—	2	0	2	0	2	0	2	0	3	0	3	0	3	0	3	0	3	0	3	0	4
—	3	0	3	0	3	0	4	0	4	0	4	0	4	0	5	0	5	0	5	0	5
—	6	0	6	0	7	0	7	0	8	0	8	0	9	0	9	0	10	0	10	0	11

Length		13 *Inches Wide, Deep or Thick, — By*																	
ft.	*in.*	13 *in.*		14 *in.*		15 *in.*		16 *in.*		17 *in.*		18 *in.*		19 *in.*		20 *in*		21 *in.*		22 *in.*	
1	—	1	2	1	3	1	4	1	5	1	6	1	8	1	9	1	10	1	11	2	0
2	—	2	4	2	6	2	9	2	11	3	1	3	3	3	5	3	7	3	10	4	0
3	—	3	6	3	10	4	1	4	4	4	7	4	11	5	2	5	5	5	8	6	0
4	—	4	8	5	1	5	5	5	9	6	2	6	6	6	10	7	3	7	7	7	11
5	—	5	10	6	4	6	9	7	3	7	8	8	2	8	7	9	0	9	6	9	11
6	—	7	1	7	7	8	2	8	8	9	3	9	9	10	4	10	10	11	5	11	11
—	1	0	1	0	1	0	1	0	1	0	2	0	2	0	2	0	2	0	2	0	2
—	2	0	2	0	3	0	3	0	3	0	3	0	3	0	3	0	4	0	4	0	4
—	3	0	4	0	4	0	4	0	4	0	5	0	5	0	5	0	5	0	6	0	6
—	6	0	7	0	8	0	8	0	9	0	9	0	10	0	10	0	11	0	11	1	0

Length		14 *Inches Wide, Deep, or Thick, — By*																	
ft.	*in.*	14 *in.*		15 *in.*		16 *in.*		17 *in.*		18 *in.*		19 *in*		20 *in.*		21 *in,*		22 *in.*		23 *in.*	
1	—	1	4	1	6	1	7	1	8	1	9	1	10	1	11	2	1	2	2	2	3
2	—	2	9	2	11	3	1	3	4	3	6	3	8	3	11	4	1	4	3	4	6
3	—	4	1	4	5	4	8	5	0	5	3	5	7	5	10	6	2	6	5	6	9
4	—	5	5	5	10	6	3	6	7	7	0	7	5	7	9	8	2	8	7	8	11
5	—	6	10	7	4	7	9	8	3	8	9	9	3	9	9	10	3	10	8	11	2
6	—	8	2	8	9	9	4	9	11	10	6	11	1	11	8	12	3	12	10	13	5
—	1	0	1	0	1	0	2	0	2	0	2	0	2	0	2	0	2	0	2	0	2
—	2	0	3	0	3	0	3	0	3	0	4	0	4	0	4	0	4	0	4	0	4
—	3	0	4	0	4	0	5	0	5	0	5	0	6	0	6	0	6	0	6	0	7
—	6	0	8	0	9	0	9	0	10	0	11	0	11	1	0	1	0	1	1	1	1

Length		15 *Inches Wide, Deep, or Thick, — By*																	
ft.	*in.*	15 *in*		16 *in.*		17 *in.*		18 *in.*		19 *in.*		20 *in*		21 *in.*		22 *in.*		23 *in.*		24 *in.*	
1	—	1	7	1	8	1	9	1	11	2	0	2	1	2	2	2	4	2	5	2	6
2	—	3	2	3	4	3	7	3	9	4	0	4	2	4	5	4	7	4	10	5	0
3	—	4	8	5	0	5	4	5	8	5	11	6	3	6	7	6	11	7	2	7	6
4	—	6	3	6	8	7	1	7	6	7	11	8	4	8	9	9	2	9	7	10	0
5	—	7	10	8	4	8	10	9	5	9	11	10	5	10	11	11	6	12	0	12	6
6	—	9	5	10	0	10	8	11	3	11	11	12	6	13	2	13	9	14	5	15	0
—	1	0	2	0	2	0	2	0	2	0	2	0	2	0	2	0	2	0	2	0	3
—	2	0	3	0	3	0	4	0	4	0	4	0	4	0	4	0	5	0	5	0	5
—	3	0	5	0	5	0	5	0	6	0	6	0	6	0	7	0	7	0	7	0	8
—	6	0	9	0	10	0	11	0	11	1	0	1	1	1	1	1	2	1	2	1	3

Length		16 *Inches Wide, Deep, or Thick, — By*																	
ft.	*in.*	16 *in.*		17 *in.*		18 *in.*		19 *in.*		20 *in.*		21 *in.*		22 *in.*		23 *in.*		24 *in.*		25 *in.*	
1	—	1	9	1	11	2	0	2	1	2	3	2	4	2	5	2	7	2	8	2	9
2	—	3	7	3	9	4	0	4	3	4	5	4	8	4	11	5	1	5	4	5	7
3	—	5	4	5	8	6	0	6	4	6	8	7	0	7	4	7	8	8	0	8	4
4	—	7	1	7	7	8	0	8	5	8	11	9	4	9	9	10	3	10	8	11	1
5	—	8	11	9	5	10	0	10	7	11	1	11	8	12	3	12	9	13	4	13	11
6	—	10	8	11	4	12	0	12	8	13	4	14	0	14	8	15	4	16	0	16	8
—	1	0	2	0	2	0	2	0	2	0	2	0	2	0	2	0	3	0	3	0	3
—	2	0	4	0	4	0	4	0	4	0	4	0	5	0	5	0	5	0	5	0	6
—	3	0	5	0	6	0	6	0	6	0	7	0	7	0	7	0	8	0	8	0	8
—	6	0	11	0	11	1	0	1	1	1	1	1	2	1	3	1	3	1	4	1	5

Length		17 *Inches Wide, Deep, or Thick, — By*																	
ft.	*in.*	17 *in.*		18 *in.*		19 *in.*		20 *in.*		21 *in.*		22 *in.*		23 *in.*		24 *in.*		25 *in.*		26 *in.*	
1	—	2	0	2	2	2	3	2	4	2	6	2	7	2	9	2	10	2	11	3	1
2	—	4	0	4	3	4	6	4	9	5	0	5	2	5	5	5	8	5	11	6	2
3	—	6	0	6	5	6	9	7	1	7	5	7	10	8	2	8	6	8	10	9	3
4	—	8	0	8	6	9	0	9	5	9	11	10	5	10	10	11	4	11	10	12	3
5	—	10	0	10	8	11	3	11	10	12	5	13	0	13	7	14	2	14	9	15	4
6	—	12	1	12	9	13	6	14	2	14	11	15	7	16	4	17	0	17	9	18	5
—	1	0	2	0	2	0	2	0	2	0	2	0	3	0	3	0	3	0	3	0	3
—	2	0	4	0	4	0	4	0	5	0	5	0	5	0	5	0	6	0	6	0	6
—	3	0	6	0	6	0	7	0	7	0	7	0	8	0	8	0	9	0	9	0	9
—	6	1	0	1	1	1	1	1	2	1	3	1	4	1	4	1	5	1	6	1	6

Length		18 *Inches Wide, Deep, or Thick, — By*																	
ft.	*in.*	18 *in*		19 *in.*		20 *in.*		21 *in.*		22 *in.*		23 *in.*		24 *in.*		25 *in.*		26 *in.*		27 *in.*	
1	—	2	3	2	5	2	6	2	8	2	9	2	11	3	0	3	2	3	3	3	5
2	—	4	6	4	9	5	0	5	3	5	6	5	9	6	0	6	3	6	6	6	9
3	—	6	9	7	2	7	6	7	11	8	3	8	8	9	0	9	5	9	9	10	2
4	—	9	0	9	6	10	0	10	6	11	0	11	6	12	0	12	6	13	0	13	6
5	—	11	3	11	11	12	6	13	2	13	9	14	5	15	0	15	8	16	3	16	11
6	—	13	6	14	3	15	0	15	9	16	6	17	3	18	0	18	9	19	6	20	3
—	1	0	2	0	2	0	3	0	3	0	3	0	3	0	3	0	3	0	3	0	3
—	2	0	5	0	5	0	5	0	5	0	6	0	6	0	6	0	6	0	7	0	7
—	3	0	7	0	7	0	8	0	8	0	8	0	9	0	9	0	9	0	10	0	10
—	6	1	2	1	2	1	3	1	4	1	5	1	5	1	6	1	7	1	8	1	8

Length		19 *Inches Wide, Deep, or Thick, — By*																	
ft.	*in.*	19 *in.*		20 *in.*		21 *in.*		22 *in.*		23 *in.*		24 *in.*		25 *in.*		26 *in.*		27 *in.*		28 *in.*	
1	—	2	6	2	8	2	9	2	11	3	0	3	2	3	4	3	5	3	7	3	8
2	—	5	0	5	3	5	7	5	10	6	1	6	4	6	7	6	10	7	2	7	5
3	—	7	6	7	11	8	4	8	9	9	1	9	6	9	11	10	4	10	8	11	1
4	—	10	0	10	7	11	1	11	7	12	2	12	8	13	2	13	9	14	3	14	9
5	—	12	6	13	2	13	10	14	6	15	2	15	10	16	6	17	2	17	10	18	6
6	—	15	1	15	10	16	8	17	5	18	3	19	0	19	10	20	7	21	5	22	2
—	1	0	3	0	3	0	3	0	3	0	3	0	3	0	3	0	3	0	4	0	4
—	2	0	5	0	5	0	6	0	6	0	6	0	6	0	7	0	7	0	7	0	7
—	3	0	8	0	8	0	8	0	9	0	9	0	10	0	10	0	10	0	11	0	11
—	6	1	3	1	4	1	5	1	5	1	6	1	7	1	8	1	9	1	9	1	10

Length		20 *Inches Wide, Deep, or Thick, — By*															
ft	*in.*	20 *in.*		21 *in.*		22 *in.*		23 *in.*		24 *in.*		25 *in.*		26 *in.*		27 *in.*	
1	—	2	9	2	11	3	1	3	2	3	4	3	6	3	7	3	9
2	—	5	7	5	10	6	1	6	5	6	8	6	11	7	3	7	6
3	—	8	4	8	9	9	2	9	7	10	0	10	5	10	10	11	3
4	—	11	1	11	8	12	3	12	9	13	4	13	11	14	5	15	0
5	—	13	11	14	7	15	3	16	0	16	8	17	4	18	1	18	9
6	—	16	8	17	6	18	4	19	2	20	0	20	10	21	8	22	6
—	1	0	3	0	3	0	3	0	3	0	3	0	3	0	4	0	4
—	2	0	6	0	6	0	6	0	6	0	7	0	7	0	7	0	8
—	3	0	8	0	9	0	9	0	10	0	10	0	10	0	11	0	11
—	6	1	5	1	6	1	6	1	7	1	8	1	9	1	10	1	11

Length		21 *Inches Wide, Deep, or Thick, — By*															
ft.	*in.*	21 *in.*		22 *in.*		23 *in.*		24 *in.*		25 *in.*		26 *in.*		27 *in.*		28 *in.*	
1	—	3	1	3	3	3	4	3	6	3	8	3	10	3	11	4	1
2	—	6	2	6	5	6	9	7	0	7	4	7	7	7	11	8	2
3	—	9	2	9	8	10	1	10	6	10	11	11	5	11	10	12	3
4	—	12	3	12	10	13	5	14	0	14	7	15	2	15	9	16	4
5	—	15	4	16	1	16	9	17	6	18	3	19	0	19	8	20	5
6	—	18	5	19	3	20	2	21	0	21	11	22	9	23	8	24	6
—	1	0	3	0	3	0	3	0	4	0	4	0	4	0	4	0	4
—	2	0	6	0	6	0	7	0	7	0	7	0	8	0	8	0	8
—	3	0	9	0	10	0	10	0	11	0	11	0	11	1	0	1	0
—	6	1	6	1	7	1	8	1	9	1	10	1	11	2	0	2	1

Length		22 *Inches Wide, Deep, or Thick, — By*															
ft.	*in.*	22 *in*		23 *in.*		24 *in.*		25 *in.*		26 *in.*		27 *in.*		28 *in*		29 *in.*	
1	—	3	4	3	6	3	8	3	10	4	0	4	2	4	3	4	5
2	—	6	9	7	0	7	4	7	8	7	11	8	3	8	7	8	10
3	—	10	1	10	7	11	0	11	6	11	11	12	5	12	10	13	4
4	—	13	5	14	1	14	8	15	3	15	11	16	6	17	1	17	9
5	—	16	10	17	7	18	4	19	1	19	10	20	8	21	5	22	2
6	—	20	2	21	1	22	0	22	11	23	10	24	9	25	8	26	7
—	1	0	3	0	4	0	4	0	4	0	4	0	4	0	4	0	4
—	2	0	7	0	7	0	7	0	8	0	8	0	8	0	9	0	9
—	3	0	10	0	11	0	11	0	11	1	0	1	0	1	1	1	1
—	6	1	8	1	9	1	10	1	11	2	0	2	1	2	2	2	3

Length		23 *Inches Wide, Deep, or Thick, — By*															
ft.	*in.*	23 *in.*		24 *in.*		25 *in.*		26 *in.*		27 *in.*		28 *in.*		29 *in.*		30 *in.*	
1	—	3	8	3	10	4	0	4	2	4	4	4	6	4	8	4	10
2	—	7	4	7	8	8	0	8	4	8	8	8	11	9	3	9	7
3	—	11	0	11	6	12	0	12	6	12	11	13	5	13	11	14	5
4	—	14	8	15	4	16	0	16	7	17	3	17	11	18	6	19	2
5	—	18	4	19	2	20	0	20	9	21	7	22	4	23	2	24	0
6	—	22	1	23	0	24	0	24	11	25	11	26	10	27	10	28	9
—	1	0	4	0	4	0	4	0	4	0	4	0	4	0	5	0	5
—	2	0	7	0	8	0	8	0	8	0	9	0	9	0	9	0	10
—	3	0	11	1	0	1	0	1	0	1	1	1	1	1	2	1	3
—	6	1	10	1	11	2	0	2	1	2	2	2	3	2	4	2	5

Length		24 *Inches Wide, Deep, or Thick, — By*																	
ft.	*in.*	24 *in.*		25 *in.*		26 *in.*		27 *in.*		28 *in.*		29 *in.*		30 *in.*		31 *in.*		32 *in.*		33 *in.*	
1	—	4	0	4	2	4	4	4	6	4	8	4	10	5	0	5	2	5	4	5	6
2	—	8	0	8	4	8	8	9	0	9	4	9	8	10	0	10	4	10	8	11	0
3	—	12	0	12	6	13	0	13	6	14	0	14	6	15	0	15	6	16	0	16	6
4	—	16	0	16	8	17	4	18	0	18	8	19	4	20	0	20	8	21	4	22	0
5	—	20	0	20	10	21	8	22	6	23	4	24	2	25	0	25	10	26	8	27	6
6	—	24	0	25	0	26	0	27	0	28	0	29	0	30	0	31	0	32	0	33	0
—	1	0	4	0	4	0	4	0	5	0	5	0	5	0	5	0	5	0	5	0	6
—	2	0	8	0	8	0	9	0	9	0	9	0	10	0	10	0	10	0	11	0	11
—	3	1	0	1	1	1	1	1	2	1	2	1	3	1	3	1	4	1	4	1	5
—	6	2	0	2	1	2	2	2	3	2	4	2	5	2	6	2	7	2	8	2	9

Length		25 *Inches Wide, Deep or Thick, — By*																	
ft.	*in.*	25 *in.*		26 *in.*		27 *in.*		28 *in.*		29 *in.*		30 *in.*		31 *in.*		32 *in.*		33 *in.*		34 *in.*	
1	—	4	4	4	6	4	8	4	10	5	0	5	3	5	5	5	7	5	9	5	11
2	—	8	8	9	0	9	5	9	9	10	1	10	5	10	9	11	1	11	6	11	10
3	—	13	0	13	7	14	1	14	7	15	1	15	8	16	2	16	8	17	2	17	9
4	—	17	4	18	1	18	9	19	5	20	2	20	10	21	6	22	3	22	11	23	7
5	—	21	8	22	7	23	5	24	4	25	2	26	1	26	11	27	9	28	8	29	6
6	—	26	1	27	1	28	2	29	2	30	3	31	3	32	4	33	4	34	5	35	5
—	1	0	4	0	5	0	5	0	5	0	5	0	5	0	5	0	6	0	6	0	6
—	2	0	9	0	9	0	9	0	10	0	10	0	10	0	11	0	7	0	11	1	0
—	3	1	1	1	2	1	2	1	3	1	3	1	4	1	4	1	5	1	5	1	6
—	6	2	2	2	3	2	4	2	5	2	6	2	7	2	8	2	9	2	10	2	11

Length		26 *Inches Wide, Deep, or Thick, — By*																	
ft.	*in.*	26 *in.*		27 *in.*		28 *in.*		29 *in.*		30 *in.*		31 *in.*		32 *in.*		33 *in.*		34 *in.*		35 *in.*	
1	—	4	8	4	11	5	1	5	3	5	5	5	7	5	9	6	0	6	2	6	4
2	—	9	5	9	9	10	1	10	6	10	10	11	2	11	7	11	11	12	3	12	8
3	—	14	1	14	8	15	2	15	9	16	3	16	10	17	4	17	11	18	5	19	0
4	—	18	9	19	6	20	3	20	11	21	8	22	5	23	1	23	10	24	7	25	3
5	—	23	6	24	5	25	3	26	2	27	1	28	0	28	11	29	10	30	8	31	7
6	—	28	2	29	3	30	4	31	5	32	6	33	7	34	8	35	9	36	10	37	11
—	1	0	5	0	5	0	5	0	5	0	5	0	6	0	6	0	6	0	6	0	6
—	2	0	9	0	10	0	10	0	10	0	11	0	11	1	0	1	0	1	0	1	1
—	3	1	2	1	3	1	3	1	4	1	4	1	5	1	5	1	6	1	6	1	7
—	6	2	4	2	5	2	6	2	7	2	9	2	10	2	11	3	0	3	1	3	2

Length		27 *Inches Wide, Deep, or Thick, — By*																	
ft.	*in.*	27 *in*		28 *in.*		29 *in.*		30 *in.*		31 *in.*		32 *in*		33 *in.*		34 *in.*		35 *in.*		36 *in.*	
1	—	5	1	5	3	5	5	5	8	5	10	6	0	6	2	6	5	6	7	6	9
2	—	10	2	10	6	10	11	11	3	11	8	12	0	12	5	12	9	13	2	13	6
3	—	15	2	15	9	16	4	16	11	17	5	18	0	18	7	19	2	19	8	20	3
4	—	20	3	21	0	21	9	22	6	23	3	24	0	24	9	25	6	26	3	27	0
5	—	25	4	26	3	27	2	28	2	29	1	30	0	30	11	31	11	32	10	33	9
6	—	30	5	31	6	32	8	33	9	34	11	36	0	37	2	38	3	39	5	40	6
—	1	0	5	0	5	0	5	0	6	0	6	0	6	0	6	0	6	0	7	0	7
—	2	0	10	0	11	0	11	0	11	1	0	1	0	1	0	1	1	1	1	1	2
—	3	1	3	1	4	1	4	1	5	1	5	1	6	1	7	1	7	1	8	1	8
—	6	2	6	2	8	2	9	2	10	2	11	3	0	3	1	3	2	3	3	3	5

Length		28 *Inches Wide, Deep, or Thick, — By*																	
ft.	*in.*	28 *in.*		29 *in.*		30 *in.*		31 *in.*		32 *in.*		33 *in.*		34 *in.*		35 *in.*		36 *in.*	
1	—	5	5	5	8	5	10	6	0	6	3	6	5	6	7	6	10	7	0
2	—	10	11	11	3	11	8	12	1	12	5	12	10	13	3	13	7	14	0
3	—	16	4	16	11	17	6	18	1	18	8	19	3	19	10	20	5	21	0
4	—	21	9	22	7	23	4	24	1	24	11	25	8	26	5	27	3	28	0
5	—	27	3	28	2	29	2	30	2	31	1	32	1	33	1	34	0	35	0
6	—	32	8	33	10	35	0	36	2	37	4	38	6	39	8	40	10	42	0
—	1	0	5	0	6	0	6	0	6	0	6	0	6	0	7	0	7	0	7
—	2	0	11	0	11	1	0	1	0	1	0	1	1	1	1	1	2	1	2
—	3	1	4	1	5	1	6	1	6	1	7	1	7	1	8	1	8	1	9
—	6	2	9	2	10	2	11	3	0	3	1	3	3	3	4	3	5	3	6

Length		29 *Inches Wide, Deep, or Thick, — By*																	
ft.	*in.*	29 *in.*		30 *in.*		31 *in.*		32 *in.*		33 *in.*		34 *in.*		35 *in.*		36 *in.*		37 *in.*	
1	—	5	10	6	1	6	3	6	5	6	8	6	10	7	1	7	3	7	5
2	—	11	8	12	1	12	6	12	11	13	4	13	8	14	1	14	6	14	11
3	—	17	6	18	2	18	9	19	4	19	11	20	7	21	2	21	9	22	4
4	—	23	4	24	2	25	0	25	9	26	7	27	5	28	2	29	0	29	10
5	—	29	2	30	3	31	3	32	3	33	3	34	3	35	3	36	3	37	3
6	—	35	1	36	3	37	6	38	8	39	11	41	1	42	4	43	6	44	9
—	1	0	6	0	6	0	6	0	6	0	7	0	7	0	7	0	7	0	7
—	2	1	0	1	0	1	0	1	1	1	1	1	2	1	2	1	3	1	3
—	3	1	6	1	6	1	7	1	7	1	8	1	9	1	9	1	10	1	10
—	6	2	11	3	0	3	1	3	3	3	4	3	5	3	6	3	8	3	9

Length		30 *Inches Wide, Deep, or Thick, — By*																	
ft.	*in.*	30 *in.*		31 *in.*		32 *in.*		33 *in.*		34 *in.*		35 *in.*		36 *in.*		37 *in.*		38 *in.*	
1	—	6	3	6	6	6	8	6	11	7	1	7	4	7	6	7	9	7	11
2	—	12	6	12	11	13	4	13	9	14	2	14	7	15	0	15	5	15	10
3	—	18	9	19	5	20	0	20	8	21	3	21	11	22	6	23	2	23	9
4	—	25	0	25	10	26	8	27	6	28	4	29	2	30	0	30	10	31	8
5	—	31	3	32	4	33	4	34	5	35	5	36	6	37	6	38	7	39	7
6	—	37	6	38	9	40	0	41	3	42	6	43	9	45	0	46	3	47	6
—	1	0	6	0	6	0	7	0	7	0	7	0	7	0	8	0	8	0	8
—	2	1	1	1	1	1	1	1	2	1	2	1	3	1	3	1	4	1	4
—	3	1	7	1	7	1	8	1	9	1	9	1	10	1	11	1	11	2	0
—	6	3	2	3	3	3	4	3	5	3	7	3	8	3	9	3	10	4	0

Length		31 *Inches Wide, Deep, or Thick, — By*																	
ft.	*in.*	31 *in.*		32 *in.*		33 *in*		34 *in.*		35 *in.*		36 *in.*		37 *in.*		38 *in.*		39 *in.*	
1	—	6	8	6	11	7	1	7	4	7	6	7	9	8	0	8	2	8	5
2	—	13	4	13	9	14	3	14	8	15	1	15	6	15	11	16	4	16	10
3	—	20	0	20	8	21	4	22	0	22	7	23	3	23	11	24	7	25	2
4	—	26	8	27	7	28	5	29	3	30	2	31	0	31	10	32	9	33	7
5	—	33	4	34	5	35	6	36	7	37	8	38	9	39	10	40	11	42	0
6	—	40	1	41	4	42	8	43	11	45	3	46	6	47	10	49	1	50	5
—	1	0	7	0	7	0	7	0	7	0	8	0	8	0	8	0	8	0	8
—	2	1	1	1	2	1	2	1	3	1	3	1	4	1	4	1	4	1	5
—	3	1	8	1	9	1	9	1	10	1	11	1	11	2	0	2	1	2	1
—	6	3	4	3	5	3	7	3	8	3	9	3	11	4	0	4	1	4	2

Length		32 *Inches Wide, Deep, or Thick, — By*																	
ft.	*in.*	32 *in.*		33 *in*		34 *in.*		35 *in.*		36 *in.*		37 *in.*		38 *in.*		39 *in.*		40 *in.*		41 *in.*	
1	—	7	1	7	4	7	7	7	9	8	0	8	3	8	5	8	8	8	11	9	1
2	—	14	3	14	8	15	1	15	7	16	0	16	5	16	11	17	4	17	9	18	3
3	—	21	4	22	0	22	8	23	4	24	0	24	8	25	4	26	0	26	8	27	4
4	—	28	5	29	4	30	3	31	1	32	0	32	11	33	9	34	8	35	7	36	5
5	—	35	7	36	8	37	9	38	11	40	0	41	1	42	3	43	4	44	5	45	7
6	—	42	8	44	0	45	4	46	8	48	0	49	4	50	8	52	0	53	4	54	8
—	1	0	7	0	7	0	8	0	8	0	8	0	8	0	8	0	9	0	9	0	9
—	2	1	2	1	3	1	3	1	4	1	4	1	4	1	5	1	5	1	6	1	6
—	3	1	9	1	10	1	11	1	11	2	0	2	1	2	1	2	2	2	3	2	3
—	6	3	7	3	8	3	9	3	11	4	0	4	1	4	3	4	4	4	5	4	7

Length		33 *Inches Wide, Deep, or Thick, —By*																	
ft.	*in.*	33 *in.*		34 *in.*		35 *in.*		36 *in.*		37 *in.*		38 *in.*		39 *in.*		40 *in.*		41 *in.*		42 *in.*	
1	—	7	7	7	10	8	0	8	3	8	6	8	9	8	11	9	2	9	5	9	8
2	—	15	2	15	7	16	1	16	6	17	0	17	5	17	11	18	4	18	10	19	3
3	—	22	8	23	5	24	1	24	9	25	5	26	2	26	10	27	6	28	2	28	11
4	—	30	3	31	2	32	1	33	0	33	11	34	10	35	9	36	8	37	7	38	6
5	—	37	10	39	0	40	1	41	3	42	5	43	7	44	8	45	10	47	0	48	2
6	—	45	5	46	9	48	2	49	6	50	11	52	3	53	8	55	0	56	5	57	9
—	1	0	8	0	8	0	8	0	8	0	8	0	9	0	9	0	9	0	9	0	10
—	2	1	3	1	4	1	4	1	5	1	5	1	5	1	6	1	6	1	7	1	7
—	3	1	11	1	11	2	0	2	1	2	1	2	2	2	3	2	4	2	4	2	5
—	6	3	9	3	11	4	0	4	2	4	3	4	4	4	6	4	7	4	8	4	10

Length		34 *Inches Wide, Deep, or Thick, — By*																	
ft.	*in.*	34 *in.*		35 *in.*		36 *in.*		37 *in.*		38 *in.*		39 *in.*		40 *in.*		41 *in.*		42 *in.*		43 *in.*	
1	—	8	0	8	3	8	6	8	9	9	0	9	3	9	5	9	8	9	11	10	2
2	—	16	1	16	6	17	0	17	6	17	11	18	5	18	11	19	4	19	10	20	4
3	—	24	1	24	10	25	6	26	3	26	11	27	8	28	4	29	1	29	9	30	6
4	—	32	1	33	1	34	0	34	11	35	11	36	10	37	9	38	9	39	8	40	7
5	—	40	2	41	4	42	6	43	8	44	10	46	1	47	3	48	5	49	7	50	9
6	—	48	2	49	7	51	0	52	5	53	10	55	3	56	8	58	1	59	6	60	11
—	1	0	8	0	8	0	9	0	9	0	9	0	9	0	9	0	10	0	10	0	10
—	2	1	4	1	5	1	5	1	5	1	6	1	6	1	7	1	7	1	8	1	8
—	3	2	0	2	1	2	2	2	2	2	3	2	4	2	4	2	5	2	6	2	6
—	6	4	0	4	2	4	3	4	4	4	6	4	7	4	9	4	10	5	0	5	1

Length		35 *Inches Wide, Deep, or Thick, — By*																	
ft.	*in.*	35 *in.*		36 *in.*		37 *in.*		38 *in.*		39 *in*		40 *in.*		41 *in.*		42 *in.*		43 *in.*		44 *in.*	
1	—	8	6	8	9	9	0	9	3	9	6	9	9	10	0	10	3	10	5	10	8
2	—	17	0	17	6	18	0	18	6	19	0	19	5	19	11	20	5	20	11	21	5
3	—	25	6	26	3	27	0	27	9	28	5	29	2	29	11	30	8	31	4	32	1
4	—	34	0	35	0	36	0	36	11	37	11	38	11	39	10	40	10	41	10	42	9
5	—	42	6	43	9	45	0	46	2	47	5	48	7	49	10	51	1	52	3	53	6
6	—	51	1	52	6	54	0	55	5	56	11	58	4	59	10	61	3	62	9	64	2
—	1	0	9	0	9	0	9	0	9	0	9	0	10	0	10	0	10	0	10	0	11
—	2	1	5	1	6	1	6	1	6	1	7	1	7	1	8	1	8	1	9	1	9
—	3	2	2	2	2	2	3	2	4	2	4	2	5	2	6	2	7	2	7	2	8
—	6	4	3	4	5	4	6	4	7	4	9	4	10	5	0	5	1	5	3	5	4

Length		36 *Inches Wide, Deep, or Thick, — By*																	
ft.	*in.*	36 *in.*		37 *in.*		38 *in.*		39 *in.*		40 *in.*		41 *in.*		42 *in.*		43 *in.*		44 *in.*		45 *in.*	
1	—	9	0	9	3	9	6	9	9	10	0	10	3	10	6	10	9	11	0	11	3
2	—	18	0	18	6	19	0	19	6	20	0	20	6	21	0	21	6	22	0	22	6
3	—	27	0	27	9	28	6	29	3	30	0	30	9	31	6	32	3	33	0	33	9
4	—	36	0	37	0	38	0	39	0	40	0	41	0	42	0	43	0	44	0	45	0
5	—	45	0	46	3	47	6	48	9	50	0	51	3	52	6	53	9	55	0	56	3
6	—	54	0	55	6	57	0	58	6	60	0	61	6	63	0	64	6	66	0	67	6
—	1	0	9	0	9	0	10	0	10	0	10	0	10	0	11	0	11	0	11	0	11
—	2	1	6	1	7	1	7	1	8	1	8	1	9	1	9	1	10	1	10	1	11
—	3	2	3	2	4	2	5	2	5	2	6	2	7	2	8	2	8	2	9	2	10
—	6	4	6	4	8	4	9	4	11	5	0	5	2	5	3	5	5	5	6	5	8

Length		37 *Inches Wide, Deep, or Thick, — By*																	
ft.	*in.*	37 *in.*		38 *in.*		39 *in.*		40 *in.*		41 *in.*		42 *in.*		43 *in.*		44 *in.*		45 *in.*		46 *in.*	
1	—	9	6	9	9	10	0	10	3	10	6	10	10	11	1	11	4	11	7	11	10
2	—	19	0	19	6	20	1	20	7	21	1	21	7	22	1	22	7	23	2	23	8
3	—	28	6	29	4	30	1	30	10	31	7	32	5	33	2	33	11	34	8	35	6
4	—	38	0	39	1	40	1	41	1	42	2	43	2	44	2	45	3	46	3	47	3
5	—	47	6	48	10	50	1	51	5	52	8	54	0	55	3	56	6	57	10	59	1
6	—	57	1	58	7	60	2	61	8	63	3	64	9	66	4	67	10	69	5	70	11
—	1	0	10	0	10	0	10	0	10	0	11	0	11	0	11	0	11	1	0	1	0
—	2	1	7	1	8	1	8	1	9	1	9	1	10	1	10	1	11	1	11	2	0
—	3	2	5	2	5	2	6	2	7	2	8	2	8	2	9	2	10	2	11	2	11
—	6	4	9	4	11	5	0	5	2	5	3	5	5	5	6	5	8	5	9	5	11

Length		38 *Inches Wide, Deep, or Thick, — By*																	
ft.	*in.*	38 *in.*		39 *in.*		40 *in.*		41 *in.*		42 *in.*		43 *in.*		44 *in.*		45 *in.*		46 *in.*		47 *in.*	
1	—	10	0	10	4	10	7	10	10	11	1	11	4	11	7	11	11	12	2	12	5
2	—	20	1	20	7	21	1	21	8	22	2	22	8	23	3	23	9	24	3	24	10
3	—	30	1	30	11	31	8	32	6	33	3	34	1	34	10	35	8	36	5	37	3
4	—	40	1	41	2	42	3	43	3	44	4	45	5	46	5	47	6	48	7	49	7
5	—	50	2	51	6	52	9	54	1	55	5	56	9	58	1	59	5	60	8	62	0
6	—	60	2	61	9	63	4	64	11	66	6	68	1	69	8	71	3	72	10	74	5
—	1	0	10	0	10	0	11	0	11	0	11	0	11	1	0	1	0	1	0	1	0
—	2	1	8	1	9	1	9	1	10	1	10	1	11	1	11	2	0	2	0	2	1
—	3	2	6	2	7	2	8	2	8	2	9	2	10	2	11	3	0	3	0	3	1
—	6	5	0	5	2	5	3	5	5	5	7	5	8	5	10	5	11	6	1	6	2

Length		39 *Inches Wide, Deep, or Thick, — By*																	
ft.	*in*	39 *in.*		40 *in.*		41 *in.*		42 *in*		43 *in.*		44 *in.*		45 *in.*		46 *in.*		47 *in.*		48 *in.*	
1	—	10	7	10	10	11	1	11	5	11	8	11	11	12	2	12	6	12	9	13	0
2	—	21	2	21	8	22	3	22	9	23	4	23	10	24	5	24	11	25	6	26	0
3	—	31	8	32	6	33	4	34	2	34	11	35	9	36	7	37	5	38	2	39	0
4	—	42	3	43	4	44	5	45	6	46	7	47	8	48	9	49	10	50	11	52	0
5	—	52	10	54	2	55	6	56	11	58	3	59	7	60	11	62	4	63	8	65	0
6	—	63	5	65	0	66	8	68	3	69	11	71	6	73	2	74	9	76	5	78	0
—	1	0	11	0	11	0	11	0	11	1	0	1	0	1	0	1	1	1	1	1	1
—	2	1	9	1	10	1	10	1	11	1	11	2	0	2	0	2	1	2	1	2	2
—	3	2	8	2	9	2	9	2	10	2	11	3	0	3	1	3	1	3	2	3	3
—	6	5	3	5	5	5	7	5	8	5	10	6	0	6	1	6	3	6	4	6	6

Length		40 *Inches Wide, Deep, or Thick, — By*																	
ft	*in.*	40 *in.*		41 *in.*		42 *in.*		43 *in.*		44 *in.*		45 *in.*		46 *in.*		47 *in.*		48 *in.*	49 *in.*
1	—	11	1	11	5	11	8	11	11	12	3	12	6	12	9	13	1	13 4	13 7
2	—	22	3	22	9	23	4	23	11	24	5	25	0	25	7	26	1	26 8	27 3
3	—	33	4	34	2	35	0	35	10	36	8	37	6	38	4	39	2	40 0	40 10
4	—	44	5	45	7	46	8	47	9	48	11	50	0	51	1	52	3	53 4	54 5
5	—	55	7	56	11	58	4	59	9	61	1	62	6	63	11	65	3	66 8	68 1
6	—	66	8	68	4	70	0	71	8	73	4	75	0	76	8	78	4	80 0	81 8
—	1	0	11	0	11	1	0	1	0	1	0	1	1	1	1	1	1	1 1	1 2
—	2	1	10	1	11	1	11	2	0	2	0	2	1	2	2	2	2	2 3	2 3
—	3	2	9	2	10	2	11	3	0	3	1	3	2	3	2	3	3	3 4	3 5
—	6	5	7	5	8	5	10	6	0	6	1	6	3	6	5	6	6	6 8	6 10

Length		41 *Inches Wide, Deep, or Thick, — By*																	
ft.	*in*	41 *in.*		42 *in.*		43 *in.*		44 *in.*		45 *in.*		46 *in.*		47 *in.*		48 *in.*		49 *in.*	50 *in.*
1	—	11	8	12	0	12	3	12	6	12	10	13	1	13	5	13	8	13 11	14 3
2	—	23	4	23	11	24	6	25	1	25	8	26	2	26	9	27	4	27 11	28 6
3	—	35	0	35	11	36	9	37	7	38	5	39	4	40	2	41	0	41 10	42 9
4	—	46	8	47	10	49	0	50	1	51	3	52	5	53	6	54	8	55 10	56 11
5	—	58	4	59	10	61	3	62	8	64	1	65	6	66	11	68	4	69 9	71 2
6	—	70	1	71	9	73	6	75	2	76	11	78	7	80	4	82	0	83 9	85 5
—	1	1	0	1	0	1	0	1	1	1	1	1	2	1	2	1	2	1 2	1 2
—	2	1	11	2	0	2	0	2	1	2	2	2	2	2	3	2	3	2 4	2 4
—	3	2	11	3	0	3	1	3	2	3	2	3	3	3	4	3	5	3 6	3 7
—	6	5	10	6	0	6	1	6	3	6	5	6	7	6	8	6	10	7 0	7 1

Length		42 *Inches Wide, Deep, or Thick, — By*																	
ft.	*in.*	42 *in.*		43 *in.*		44 *in.*		45 *in.*		46 *in.*		47 *in.*		48 *in.*		49 *in.*		50 *in.*	51 *in.*
1	—	12	3	12	7	12	10	13	2	13	5	13	9	14	0	14	4	14 7	14 11
2	—	24	6	25	1	25	8	26	3	26	10	27	5	28	0	28	7	29 2	29 9
3	—	36	9	37	8	38	6	39	5	40	3	41	2	42	0	42	11	43 9	44 8
4	—	49	0	50	2	51	4	52	6	53	8	54	10	56	0	57	2	58 4	59 6
5	—	61	3	62	9	64	2	65	8	67	1	68	7	70	0	71	6	72 11	74 5
6	—	73	6	75	3	77	0	78	9	80	6	82	3	84	0	85	9	87 6	89 3
—	1	1	0	1	1	1	1	1	1	1	1	1	2	1	2	1	2	1 3	1 3
—	2	2	1	2	1	2	2	2	2	2	3	2	3	2	4	2	5	2 5	2 6
—	3	3	1	3	2	3	3	3	3	3	4	3	5	3	6	3	7	3 8	3 9
—	6	6	2	6	3	6	5	6	7	6	9	6	10	7	0	7	2	7 4	7 5

Length		43 *Inches Wide, Deep, or Thick, — By*																	
ft.	*in.*	43 *in.*		44 *in*		45 *in.*		46 *in.*		47 *in.*		48 *in.*		49 *in.*		50 *in.*		51 *in.*	52 *in.*
1	—	12	10	13	2	13	5	13	9	14	0	14	4	14	8	14	11	15 3	15 6
2	—	25	8	26	3	26	11	27	6	28	1	28	8	29	3	29	10	30 6	31 1
3	—	38	6	39	5	40	4	41	3	42	1	43	0	43	11	44	10	45 8	46 7
4	—	51	4	52	7	53	9	54	11	56	2	57	4	58	6	59	9	60 11	62 1
5	—	64	2	65	8	67	2	68	8	70	2	71	8	73	2	74	8	76 2	77 8
6	—	77	1	78	10	80	8	82	5	84	3	86	0	87	10	89	7	91 5	93 2
—	1	1	1	1	1	1	1	1	2	1	2	1	2	1	3	1	3	1 3	1 3
—	2	2	2	2	2	2	3	2	3	2	4	2	5	2	5	2	6	2 6	2 7
—	3	3	3	3	3	3	4	3	5	3	6	3	7	3	8	3	9	3 10	3 10
—	6	6	5	6	7	6	9	6	10	7	0	7	2	7	4	7	6	7 7	7 9

Length		44 *Inches Wide, Deep, or Thick, — By*															
ft.	*in.*	44 *in.*		45 *in.*		46 *in.*		47 *in.*		48 *in.*		49 *in.*		50 *in.*		51 *in.*	
1	—	13	5	13	9	14	1	14	4	14	8	15	00	15	3	15	7
2	—	26	11	27	6	28	1	28	9	29	4	29	11	30	7	31	2
3	—	40	4	41	3	42	2	43	1	44	0	44	11	45	10	46	9
4	—	53	9	55	0	56	3	57	5	58	8	59	11	61	1	62	4
5	—	67	3	68	9	70	3	71	10	73	4	74	10	76	5	77	11
6	—	80	8	82	6	84	4	86	2	88	0	89	10	91	8	93	6
—	1	1	1	1	2	1	2	1	2	1	3	1	3	1	3	1	3
—	2	2	3	2	4	2	4	2	5	2	5	2	6	2	7	2	7
—	3	3	4	3	5	3	6	3	7	3	8	3	9	3	10	3	11
—	6	6	9	6	11	7	0	7	2	7	4	7	6	7	8	7	10

Length		45 *Inches Wide, Deep, or Thick, — By*															
ft.	*in.*	45 *in.*		46 *in.*		47 *in.*		48 *in.*		49 *in.*		50 *in.*		51 *in.*		52 *in*	
1	—	14	1	14	5	14	8	15	0	15	4	15	8	15	11	16	3
2	—	28	2	28	9	29	5	30	0	30	8	31	3	31	11	32	6
3	—	42	2	43	2	44	1	45	0	45	11	46	11	47	10	48	9
4	—	56	3	57	6	58	9	60	0	61	3	62	6	63	9	65	0
5	—	70	4	71	11	73	5	75	0	76	7	78	2	79	8	81	3
6	—	84	5	86	3	88	2	90	0	91	11	93	9	95	8	97	6
—	1	1	2	1	2	1	3	1	3	1	3	1	4	1	4	1	4
—	2	2	4	2	5	2	5	2	6	2	7	2	8	2	9	2	9
—	3	3	6	3	7	3	8	3	9	3	10	3	11	4	0	4	1
—	6	7	0	7	2	7	4	7	6	7	8	7	10	8	0	8	2

Length		46 *Inches Wide, Deep, or Thick, — By*															
ft.	*in.*	46 *in.*		47 *in.*		48 *in.*		49 *in.*		50 *in.*		51 *in.*		52 *in.*		53 *in.*	
1	—	14	8	15	0	15	4	15	8	16	0	16	4	16	7	16	11
2	—	29	5	30	0	30	8	31	4	31	11	32	7	33	3	33	10
3	—	44	1	45	1	46	0	47	0	47	11	48	11	49	10	50	10
4	—	58	9	60	1	61	4	62	7	63	11	65	2	66	5	67	9
5	—	73	6	75	1	76	8	78	3	79	10	81	6	83	1	84	8
6	—	88	2	90	1	92	0	93	11	95	10	97	9	99	8	101	7
—	1	1	3	1	3	1	3	1	4	1	4	1	4	1	5	1	5
—	2	2	5	2	6	2	7	2	7	2	8	2	9	2	9	2	10
—	3	3	8	3	9	3	10	3	11	4	0	4	1	4	2	4	3
—	6	7	4	7	6	7	8	7	10	8	0	8	2	8	4	8	5

Length		47 *Inches Wide, Deep, or Thick, — By*															
ft.	*in.*	47 *in.*		48 *in.*		49 *in*		50 *in.*		51 *in.*		52 *in.*		53 *in.*		54 *in.*	
1	—	15	4	15	8	16	0	16	4	16	8	17	0	17	4	17	8
2	—	30	8	31	4	32	0	32	8	33	4	33	11	34	7	35	3
3	—	46	0	47	0	48	0	49	0	49	11	50	11	51	11	52	11
4	—	61	4	62	8	64	0	65	3	66	7	67	11	69	2	70	6
5	—	76	8	78	4	80	0	81	7	83	3	84	10	86	6	88	2
6	—	92	1	94	0	96	0	97	11	99	11	101	10	103	10	105	9
—	1	1	3	1	4	1	4	1	4	1	5	1	5	1	5	1	6
—	2	2	7	2	7	2	8	2	9	2	9	2	10	2	11	2	11
—	3	3	10	3	11	4	0	4	1	4	2	4	3	4	4	4	5
—	6	7	8	7	10	8	0	8	2	8	4	8	6	8	8	8	10

Length		44 *Inches Wide, Deep, or Thick, — By*															
ft.	*in.*	52 *in.*		53 *in.*		54 *in.*		55 *in.*		56 *in.*		57 *in.*		58 *in.*		59 *in.*	
1	—	15	11	16	2	16	6	16	9	17	1	17	5	17	8	18	0
2	—	31	9	32	5	33	0	33	7	34	3	34	10	35	5	36	1
3	—	47	7	48	7	49	6	50	5	51	4	52	3	53	3	54	2
4	—	63	6	64	9	66	0	67	3	68	6	69	9	71	0	72	3
5	—	79	5	81	0	82	6	83	11	85	7	87	2	88	8	90	3
6	—	95	4	97	2	98	11	100	8	102	5	104	4	106	1	107	10
—	1	1	6	1	6	1	6	1	7	1	7	1	7	1	8	1	8
—	2	3	0	3	1	3	2	3	3	3	4	3	5	3	6	3	7
—	3	4	6	4	7	4	8	4	10	5	0	5	1	5	2	5	3
—	6	9	0	9	2	9	4	9	6	9	8	9	10	10	0	10	2

Length		48 *Inches Wide, Deep, or Thick, — By*															
ft.	*in.*	48 *in.*		49 *in.*		50 *in.*		51 *in.*		52 *in.*		53 *in*		54 *in.*		55 *in.*	
1	—	16	0	16	4	16	8	17	0	17	4	17	8	18	0	18	4
2	—	32	0	32	8	33	4	34	0	34	8	35	4	36	0	36	8
3	—	48	0	49	0	50	0	51	0	52	0	53	0	54	0	55	0
4	—	64	0	65	4	66	8	68	0	69	4	70	8	72	0	73	4
5	—	80	0	81	8	83	4	85	0	86	8	88	4	90	0	91	8
6	—	96	0	98	0	100	0	102	0	104	0	106	0	108	0	110	0
—	1	1	4	1	4	1	5	1	5	1	5	1	6	1	6	1	6
—	2	2	8	2	9	2	9	2	10	2	11	2	11	3	0	3	1
—	3	4	0	4	1	4	2	4	3	4	4	4	5	4	6	4	7
—	6	8	0	8	2	8	4	8	6	8	8	8	10	9	0	9	3

Length		56 *in.*		57 *in.*	
1	—	18	8	19	0
2	—	37	4	38	0
3	—	56	0	57	0
4	—	74	8	76	0
5	—	93	4	95	0
6	—	112	0	114	0
—	1	1	7	1	7
—	2	3	1	3	2
—	3	4	8	4	9
—	6	9	4	9	6

Length		49 *Inches Wide, Deep, or Thick, —By*									
ft.	*in.*	49 *in.*		50 *in.*		51 *in.*		52 *in.*		53 *in.*	
1	—	16	8	17	0	17	4	17	8	18	0
2	—	33	4	34	0	34	9	35	5	36	1
3	—	50	0	51	1	52	1	53	1	54	1
4	—	66	8	68	1	69	5	70	9	72	2
5	—	83	4	85	1	86	9	88	6	90	2
6	—	100	1	102	1	104	2	106	2	108	3
—	1	1	5	1	5	1	5	1	6	1	6
—	2	2	9	2	10	2	11	2	11	3	0
—	3	4	2	4	3	4	4	4	5	4	6
—	6	8	4	8	6	8	8	8	10	9	0

Length		54 *in.*		55 *in.*	
1	—	18	5	19	1
2	—	36	9	38	2
3	—	55	2	57	4
4	—	73	6	76	5
5	—	91	11	95	6
6	—	110	3	114	7
—	1	1	6	1	7
—	2	3	1	3	2
—	3	4	7	4	8
—	6	9	2	9	7

Length		50 *Inches Wide, Deep, or Thick, — By*									
ft.	*in.*	50 *in.*		51 *in.*		52 *in.*		53 *in.*		54 *in.*	
1	—	17	4	17	9	18	1	18	5	18	9
2	—	34	9	35	5	36	1	36	10	37	6
3	—	52	1	53	2	54	2	55	3	56	3
4	—	69	5	70	10	72	3	73	7	75	0
5	—	86	10	88	7	90	3	92	0	93	9
6	—	104	2	106	3	108	4	110	5	112	6
—	1	1	5	1	6	1	6	1	6	1	7
—	2	2	11	2	11	3	0	3	1	3	2
—	3	4	4	4	5	4	6	4	7	4	8
—	6	8	8	8	10	9	0	9	2	9	5

Length		55 *in.*	
1	—	19	1
2	—	38	2
3	—	57	4
4	—	76	5
5	—	95	6
6	—	114	7
—	1	1	7
—	2	3	2
—	3	4	9
—	6	9	7

Length		51 *Inches Wide, Deep, or Thick, — By*									
ft.	*in.*	51 *in.*		52 *in.*		53 *in.*		54 *in.*		55 *in.*	
1	—	18	1	18	5	18	9	19	2	19	6
2	—	36	2	36	10	37	7	38	3	39	0
3	—	54	2	55	3	56	4	57	5	58	5
4	—	72	3	73	8	75	1	76	6	77	11
5	—	90	4	92	1	93	10	95	8	97	5
6	—	108	5	110	6	112	8	114	9	116	11
—	1	1	6	1	6	1	7	1	7	1	7
—	2	3	0	3	1	3	2	3	2	3	3
—	3	4	6	4	7	4	8	4	9	4	10
—	6	9	0	9	3	9	5	9	7	9	9

Length		56 *in.*	
1	—	19	10
2	—	39	8
3	—	59	6
4	—	79	4
5	—	99	2
6	—	119	0
—	1	1	8
—	2	3	4
—	3	5	0
—	6	9	11

Length		52 *Inches Wide, Deep, or Thick, — By*					
ft.	*in.*	52 *in.*	53 *in.*	54 *in.*	55 *in.*	56 *in.*	57 *in.*
1	—	18 9	19 2	19 6	19 10	20 3	20 7
2	—	37 7	38 3	39 0	39 9	40 5	41 2
3	—	56 4	57 5	58 6	59 7	60 8	61 9
4	—	75 1	76 7	78 0	79 5	80 11	82 4
5	—	93 11	95 8	97 6	99 4	101 1	102 11
6	—	112 8	114 10	117 0	119 2	121 4	123 6
—	1	1 7	1 7	1 8	1 8	1 8	1 9
—	2	3 2	3 2	3 3	3 4	3 4	3 5
—	3	4 8	4 9	4 11	5 0	5 1	5 2
—	6	9 5	9 7	9 9	9 11	10 1	10 4

Length		53 *Inches Wide, Deep, or Thick, — By*					
ft.	*in.*	53 *in.*	54 *in.*	55 *in.*	56 *in.*	57 *in.*	58 *in.*
1	—	19 6	19 11	20 3	20 7	21 0	21 4
2	—	39 0	39 9	40 6	41 3	42 0	42 8
3	—	58 6	59 8	60 9	61 10	62 11	64 1
4	—	78 0	79 6	81 0	82 5	83 11	85 5
5	—	97 6	99 5	101 3	103 1	104 11	106 9
6	—	117 1	119 3	121 6	123 8	125 11	128 1
—	1	1 8	1 8	1 8	1 9	1 9	1 9
—	2	3 3	3 4	3 4	3 5	3 6	3 8
—	3	4 11	5 0	5 1	5 2	5 3	5 7
—	6	9 9	9 11	10 1	10 4	10 6	10 4

The following Rules are applicable to cases where the Tables do not show the dimensions of a Package.

If the Length of a Box or Package is in Feet and Inches, add or deduct the *Inches*, found at the foot of the Table. Supposing a Box, 3 feet 3 inches long, *add* the 3 *inches*, but if 3 feet 9 inches long, then *deduct* 3 inches from 4 feet

If a Package exceed 6 feet in length, add together the *products* opposite any two lengths, or take twice one length.

Thus: — If a Package is 9 feet Long and 20 inches by 20, *add* together the *products* opposite 4 and 5 Feet and under 20 Inches; and so of any other length.

Or, if the Depth or Breadth of a Package cannot be found in the Tables, add the *products* of two Breadths together, or, take twice one breadth.

Thus: — If a Package is 3 feet Long and 21 by 36 inches, turn to the Table headed with *half* of the largest number and *double* the *product* opposite 3 Feet and under 21 Inches. — Or, if the breadth is an odd number (say 37 inches) then add together the *products* opposite 3 feet and under 21 inches in Tables 18 & 19.

Or, if a Package is 6 feet Long and 48 by 60 inches, turn to the Table which contains half of both numbers in inches, and *multiply by* 4 the *product* opposite 6 Feet and under 30 inches. So, if a Package is 8 feet by 8 feet and 6 inches. And so of any Box or Package of larger or smaller dimensions.

Fractions of less than an inch are not noticed, and when half an inch or over, they are counted as one inch.

To Measure Solid Feet.

Multiply the *length* in Inches by the *breadth* in Inches, and the product by the depth in Feet, and divide by 144.

Example. — A package is 58 inches broad, 54 inches deep, and 8 feet long; then

$58 \times 54 = 2916 \times 8 = 73328 \div 144 = 174$ *Solid Feet.*

And if all the dimensions are in inches, then

$96 \times 58 = 5568 \times 54 = 300672 \div 1728 = 174$ *Solid Feet.*

SHIPPER'S AND MATE'S EXPEDITIOUS CASK MEASURER.

These Tables show the Solid Contents of Hogsheads, Casks, Barrels, &c. In measuring Casks it is usual to deduct *one fifth* from the Solid Contents on account of the Bulge. *Thus:* — If a cask is 3 feet long and 28 by 28 inches, it will be seen, by the preceding pages, that its Solid Contents are 16 feet and 1 inch, but with *one fifth* off only 13 feet and 1 inch.

TABLE No. 1.

Length.		8 by 8	9 by 9	10 by 10	11 by 11	12 by 12	13 by 13
feet.	*in.*	*ft. in*	*ft. in.*	*ft. in.*	*ft. in.*	*ft. in.*	*ft. in.*
1	—	0 4	0 5	0 7	0 8	0 10	0 11
2	—	0 9	0 11	1 1	1 4	1 7	1 11
3	—	1 1	1 4	1 8	2 0	2 5	2 10
4	—	1 5	1 10	2 3	2 8	3 2	3 9
5	—	1 9	2 3	2 9	3 4	4 0	4 8
6	—	2 2	2 8	3 4	4 0	4 10	5 8
—	1	0 0	0 0	0 0	0 0	0 1	0 1
—	2	0 0	0 1	0 1	0 1	0 2	0 2
—	3	0 1	0 1	0 2	0 2	0 2	0 3
—	6	0 2	0 3	0 3	0 4	0 5	0 6

TABLE No. 2.

Length.		14 by 14	15 by 15	16 by 16	17 by 17	18 by 18	19 by 19
feet.	*in.*	*ft. in.*	*ft. in.*	*ft. in.*	*ft. in*	*ft. in.*	*ft. in.*
1	—	1 1	1 3	1 5	1 7	1 10	2 0
2	—	2 2	2 6	2 10	3 3	3 7	4 0
3	—	3 3	3 9	4 3	4 10	5 5	6 0
4	—	4 4	5 0	5 8	6 5	7 2	8 0
5	—	5 5	6 3	7 1	8 0	9 0	10 0
6	—	6 6	7 6	8 6	9 8	10 10	12 0
—	1	0 1	0 1	0 1	0 2	0 2	0 2
—	2	0 2	0 2	0 3	0 3	0 4	0 4
—	3	0 3	0 4	0 4	0 5	0 5	0 6
—	6	0 7	0 7	0 9	0 10	0 11	1 0

TABLE No. 3.

Length.		20 by 20	21 by 21	22 by 22	23 by 23	24 by 24	25 by 25
feet.	*in*	*ft. in.*	*ft. in.*	*ft. in.*	*ft. in.*	*ft. in.*	*ft. in.*
1	—	2 2	2 6	2 8	2 11	3 2	3 6
2	—	4 5	4 11	5 5	5 11	6 5	6 11
3	—	6 8	7 4	8 1	8 10	9 7	10 5
4	—	8 11	9 10	10 9	11 9	12 10	13 11
5	—	11 1	12 3	13 5	14 9	16 0	17 4
6	—	13 4	14 8	16 2	17 8	19 2	20 10
—	1	0 2	0 2	0 3	0 3	0 3	0 3
—	2	0 4	0 5	0 5	0 6	0 6	0 7
—	3	0 7	0 7	0 8	0 9	0 10	0 10
—	6	1 1	1 3	1 4	1 6	1 7	1 8

TABLE No. 4.

Length.		26 by 26	27 by 27	28 by 28	29 by 29	30 by 30	31 by 31
feet.	*in.*	*ft. in.*	*ft. in.*	*ft. in.*	*ft. in.*	*ft. in.*	*ft. in.*
1	—	3 9	4 1	4 4	4 8	5 0	5 4
2	—	7 6	8 0	8 8	9 4	10 0	10 8
3	—	11 3	12 2	13 1	14 0	15 0	16 0
4	—	15 0	16 2	17 5	18 8	20 0	21 4
5	—	18 9	20 3	21 9	23 4	25 0	26 8
6	—	22 6	24 4	26 2	28 0	30 0	32 0
—	1	0 4	0 4	0 4	0 5	0 5	0 5
—	2	0 7	0 8	0 9	0 9	0 10	0 11
—	3	0 11	1 0	1 1	1 2	1 3	1 4
—	6	1 11	2 0	2 2	2 4	2 6	2 8

TABLE No. 5.

Length.		32 by 32	33 by 33	34 by 34	35 by 35	36 by 36	37 by 37
feet.	*in.*	*ft. in.*	*ft. in.*	*ft. in.*	*ft. in.*	*ft. in.*	*ft. in.*
1	—	5 8	6 0	6 4	6 9	7 2	7 7
2	—	11 4	12 1	12 10	13 7	14 5	15 2
3	—	17 1	18 2	19 3	20 5	21 7	22 10
4	—	22 9	24 2	25 8	27 3	28 10	30 5
5	—	28 5	30 3	32 1	34 0	36 0	38 0
6	—	34 2	36 4	38 6	40 10	43 2	45 8
—	1	0 6	0 6	0 6	0 7	0 7	0 8
—	2	0 11	1 0	1 1	1 2	1 2	1 3
—	3	1 5	1 6	1 7	1 8	1 10	1 11
—	6	2 10	3 0	3 2	3 5	3 7	3 10

TABLE No. 6.

Length.		38 by 38	39 by 39	40 by 40	41 by 41	42 by 42	43 by 43
feet.	*in.*	*ft. in.*	*ft. in.*	*ft. in.*	*ft. in.*	*ft. in.*	*ft. in.*
1	—	8 0	8 5	8 10	9 4	9 9	10 3
2	—	16 0	16 11	17 8	18 8	19 7	20 6
3	—	24 0	25 4	26 8	28 0	29 5	30 9
4	—	32 1	33 10	35 7	37 4	39 2	41 1
5	—	40 1	42 3	44 5	46 8	49 0	51 4
6	—	48 2	50 8	53 4	56 0	58 10	61 8
—	1	0 8	0 8	0 9	0 9	0 10	0 10
—	2	1 4	1 5	1 6	1 7	1 8	1 9
—	3	2 0	2 1	2 3	2 4	2 5	2 7
—	6	4 0	4 3	4 5	4 8	4 11	5 2

TABLE No. 7.

Length.		44 b. 44	45 by 45	46 by 46	47 by 47	48 by 48	49 by 49
feet.	*in.*	*ft. in.*	*ft. in.*	*ft. in.*	*ft. in.*	*ft. n.*	*ft. in.*
1	—	10 8	11 3	11 8	12 3	12 9	13 4
2	—	21 6	22 6	23 6	24 6	25 7	26 8
3	—	32 3	33 8	35 3	36 8	38 5	40 0
4	—	43 0	45 0	47 0	49 1	51 2	53 4
5	—	53 9	56 3	58 9	61 4	64 0	66 8
6	—	64 6	67 6	70 6	73 8	76 10	80 0
—	1	0 11	0 11	1 0	1 0	1 1	1 1
—	2	1 9	1 10	1 11	2 1	2 2	2 3
—	3	2 8	2 10	2 11	3 1	3 3	3 4
—	6	5 4	5 7	5 10	6 2	6 6	6 8

NOTE.—If the Length of a Cask or Package is in Feet and Inches, add or deduct the *Inches*. Supposing a Cask, 3 feet 3 inches long, *add* the 3 *inches*; but if 3 feet 9 inches long, *deduct* 3 inches from 4 feet.

MEASUREMENT OF INDIA, CANTON AND MALAGA GOODS.

CALCUTTA GOODS.

Linseed, 1600 lbs., or 8½ bags per ton.
Gunny Cloth, 29 @ 32 yds. per piece, [34 ft. per bale.
Lack Dye, 220 lbs. measure 7½ ft., 192 [lbs. 4½ ft. per case.
Gunny Bags, - small 15 ft. 2 in., or 625, small, 500, medium, 425, large, } bags per ton.
Shellac, - - - 10 ft. per case.
Cow Hides, - 20½ to 30 ft. per bale.
Goat Skins, - - 28 ft. "
Jake, - - - 4 bales pr ton.
Twine, - - - 890 lbs. "
Ginger, - - - 1120 lbs. "
Saltpetre, 11 to 12 bgs. pr. ton of 2240 lbs.
Buffalo Hides, - - 37 ft. per bale.

CANTON GOODS.

Tea.

Souchong, - - chests, 45-8 feet.
Congou, - - - do. 4½ "
Hyson, - - - do. 41-8 "
Hyson Skin, - - do. 43-8 "
Ningyong, - - ½ do. 23-8 "
Young Hyson, - - ½ do. 3½ "
Hyson, - - - ½ do. 3 "
Gunpowder, - ½ chests, 27-8 @ 3 feet.
Imperial, - ½ do. 27-8 @ 3 "
Hyson Skin, ½ do. 27-8 @ 3 "
Hyson, - 13 lb. boxes, 3-4 "
do. - 6 lb. " 4-10 "
Ningyong, - 13 lb. " 1 "
Gunpowder, 13 lb. " 3-4 "

Matting.

Rolls of 40 yards, 4-4, 8¾ rolls per ton.
do. do. 5-4, 7 " " "
Rolls of 40 yards, 6-4, 5¾ rolls per ton.

Silks.

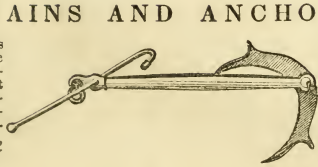
Cases of 25 pieces Pongees, 3 1-8 feet.
do. do Sinchaws, 4 "
Fire Crackers, - - 4 3-10 feet.
Cassia, - - 5 piculs per ton.
Cases of 25 pieces Sarsnetts, 4 feet.
do. do. Damask, 4 "
Preserved Ginger, - - 1 3-4 "

MALAGA GOODS.

Wine, - - 8 qr. casks per ton.
do. - 14 Indian barrels "
Raisins, - - - 20 casks "
do. - - - 80 boxes "
Raisins, 160 half, or 320 qr. bxs. per ton.
Lemons, - - 20 boxes, " "
Almonds, - - 16 frails " "
Grapes, - - 40 kegs " "

CHAINS AND ANCHORS.

Wood Brothers obtained the Prize Medal for Chain Cables at the Great Exhibition of all Nations, held in London, 1851. Stores—George Wood & Co., London; Henry Wood & Co., Liverpool.



Trotman's & Porter's Patent Anchors (Wood Bro's Manufacturers) were found to possess the greatest holding powers by 40 per cent. at the Anchor Trials of all Nations at H.M.Dock Yards, May to Octob'r, 1852.

CHAINS AND ANCHORS.

TABLE I.

Showing the Size and Lengths of Cables and Weight of Anchors required for Classing Ships agreeable to Lloyd's Regulations; also, the attested Proof of Studded and Short Link Chains. — Manufactured by Henry Wood & Co., Liverpool, and George Wood & Co., London.

Vessels Register Tonnage.	Size of CHAINS.	Lengths required.	ANCHORS. Wood Stock.	ANCHORS. Iron Stock.	ANCHORS REQUIRED. B. S. K.	Attested Proof on Chain. Size.	Studded.	Short Link.
	Inch.	Fathoms	Cwt.	Cwt.		ins.	Tons.	Tons.
50	$\frac{3}{4}$ & $\frac{11}{16}$	100	3	4	2 0 1	$\frac{5}{8}$	$6\frac{1}{4}$	5
70	$\frac{13}{16}$ " $\frac{3}{4}$	120	4	5	2 0 1	$\frac{11}{16}$	$7\frac{1}{2}$	$5\frac{3}{4}$
90	$\frac{15}{16}$ " $\frac{7}{8}$	130	5	6	2 0 1	$\frac{3}{4}$	$\cdot$	$6\frac{3}{4}$
100	1 " $\frac{15}{16}$	150	$5\frac{1}{2}$	7	2 0 1	$\frac{13}{16}$	$10\frac{1}{2}$	$7\frac{3}{4}$
130	1	150	$6\frac{1}{2}$	8	2 0 2	$\frac{7}{8}$	$12\frac{1}{4}$	9
160	$1\frac{1}{8}$ & 1	180	$8\frac{1}{2}$	10	2 1 2	$\frac{15}{16}$	14	$10\frac{1}{2}$
200	$1\frac{1}{8}$	180	11	13	2 1 2	1	16	12
250	$1\frac{1}{4}$ & $1\frac{1}{8}$	200	13	15	2 1 2	$1\frac{1}{16}$	18	14
300	$1\frac{1}{4}$	200	15	$17\frac{1}{2}$	3 1 2	$1\frac{1}{8}$	$20\frac{1}{4}$	16
350	$1\frac{3}{8}$ & $1\frac{1}{4}$	240	17	$19\frac{1}{2}$	3 1 2	$1\frac{3}{16}$	$22\frac{1}{2}$	18
400	$1\frac{3}{8}$	240	19	22	3 1 2	$1\frac{1}{4}$	25	$20\frac{1}{4}$
500	$1\frac{1}{2}$	270	$22\frac{1}{2}$	$26\frac{1}{2}$	3 1 2	$1\frac{5}{16}$	$27\frac{1}{2}$	$22\frac{1}{2}$
600	$1\frac{5}{8}$ & $1\frac{1}{2}$	270	26	30	3 1 2	$1\frac{3}{8}$	$30\frac{1}{4}$	25
700	$1\frac{5}{8}$	300	29	34	3 1 2	$1\frac{7}{16}$	$32\frac{1}{2}$	$27\frac{1}{2}$
800	$1\frac{3}{4}$ & $1\frac{5}{8}$	300	31	36	3 1 3	$1\frac{1}{2}$	36	30
900	$1\frac{3}{4}$	300	33	39	3 1 3	$1\frac{9}{16}$	$42\frac{1}{4}$	36
1000	$1\frac{7}{8}$ & $1\frac{3}{4}$	300	35	41	3 1 3	$1\frac{5}{8}$	49	42
1100	$1\frac{7}{8}$	300	37	44	3 1 3	$1\frac{11}{16}$	$52\frac{1}{2}$	49
1200	2 & $1\frac{7}{8}$	300	40	46	3 1 3	2	56	54
1500	2	300	45	52	3 1 3	$2\frac{1}{8}$	62	
2000	$2\frac{1}{8}$ & $2\frac{1}{4}$	300	50	60	3 1 3	$2\frac{1}{4}$	68	

A Stream Chain Cable is required for all vessels larger than 150 tons register. — It is also recommended that all vessels should have from 45 to 75 fathoms Mooring Chain. — A little variation in the weight of the Chains may occur, as Iron is sometimes rolled full, or otherwise. Trotman's & Porter's Patent Anchors will answer of less weight than any others. — A Certificate of the attested proof will be given with each cable, which must be produced to Lloyd's surveyors before any vessel can be classed.

IRON CHAINS AND HEMP ROPES.

A first class United States ship of the line has three chains $2\frac{1}{4}$ inches diameter, and 180 fathoms in length, and anchors of 9,000 pound weight. In the merchant service fewer and shorter chains are used than in the naval, hence heavier chains are necessary.

A modern clipper built ship requires chains and anchors of less size and weight than the full built ship of the same tonnage.

An English first rate of 120 guns, 2609 tons, has three cables of 25 inches circumference, and four chain cables of $2\frac{1}{4}$ inches diameter in links, and four anchors of 4 tons 19 cwt.

An 84 of 2284 tons, has three cables of $23\frac{1}{2}$ inches circumference, four $2\frac{1}{8}$ inch chains, and four anchors of 4 tons 5 cwt. each.

A 50 gun frigate, of 2082 tons, has three $21\frac{1}{2}$ inch cables, four 2 inch chains, and four anchors of 3 tons 10 cwt. each.

A 42 gun ship, of 1084 tons, has three $18\frac{1}{2}$ inch cables, three $1\frac{3}{4}$ inch chains, and four anchors of 47 cwt. each.

A 26 gun ship of 913 tons, has three 17 inch cables, three $1\frac{5}{8}$ inch chains, and 4 anchors of 38 cwt. each.

An 18 gun ship, of 462 tons, has one 14 inch cable, three $1\frac{3}{8}$ inch chains, and four anchors of 23 cwt. each.

To ascertain the Strength of Cables, multiply the square of the circumference in inches by 120,— as follows:

$$10 \times 10 \times 120 = 12000 \text{ pounds.}$$

To ascertain the Strength of Ropes, multiply the square of the circumference by 200,— as follows:

$$6 \times 6 \times 200 = 7200 \text{ pounds.}$$

COMPARATIVE STRENGTH BETWEEN CHAINS AND HEMP ROPES

Size of the Chains.	Weight in lb. per fathom.	Proof Strain in tons.	Size of Rope.	Weight of Rope in lb. per fathom.
$\frac{5}{16}$	6	$\frac{3}{4}$	$2\frac{1}{2}$	$1\frac{1}{2}$
$\frac{3}{8}$	$8\frac{1}{2}$	$1\frac{1}{2}$	$3\frac{1}{4}$	$2\frac{1}{2}$
$\frac{7}{16}$	11	$2\frac{1}{2}$	4	$3\frac{3}{4}$
$\frac{1}{2}$	14	$3\frac{1}{2}$	$4\frac{3}{4}$	5
$\frac{9}{16}$	18	$4\frac{1}{2}$	$5\frac{1}{2}$	7
$\frac{5}{8}$	24	$5\frac{1}{4}$	$6\frac{1}{4}$	$8\frac{1}{2}$
$\frac{11}{16}$	28	$6\frac{1}{2}$	7	$10\frac{1}{2}$
$\frac{3}{4}$	32	$7\frac{3}{4}$	$7\frac{1}{2}$	12
$\frac{13}{16}$	36	$9\frac{1}{4}$	$8\frac{1}{4}$	15
$\frac{7}{8}$	44	$10\frac{3}{4}$	9	$17\frac{1}{2}$
$\frac{15}{16}$	50	$12\frac{1}{2}$	$9\frac{1}{2}$	$19\frac{1}{2}$
1	56	14	10	22

NOTE.—One-eighth of an inch of iron in diameter is more than equal to an inch of hemp rope in circumference.

CORDAGE TABLES.

Table showing the Weight of Ten Fathoms of Cable-laid Ropes.

Size in Inches.	Weight. lbs. oz.	Size in Inches.	Weight. lbs. oz.	Size in Inches.	Weight. lbs. oz.	Size in Inches.	Weight. lbs. oz.
1	2 2	5	54	9	174 15	13	365
1¼	4 1	5¼	59 8	9¼	184 13	13¼	379 3
1½	3 6	5½	65 5	9½	194 15	13½	393 10
1¾	6 9	5¾	71 6	9¾	205 5	13¼	408 6
2	8 10	6	77 12	10	216	14	423 5
2¼	10 14	6¼	84 6	10¼	226 14	15	486
2½	13 8	6½	91 4	10½	238 2	16	552 15
2¾	16 5	6¾	98 6	10¾	249 9	17	624 3
3	19 7	7	106 2	11	261 5	18	699 13
3¼	22 13	7¼	113 8	11¼	273 6	19	779 12
3½	26 7	7½	121 8	11½	285 10	20	864
3¾	30 6	7¾	129 11	11¾	298 3	21	952 8
4	34 8	8	138 3	12	311	22	1045 7
4¼	39 0	8¼	147	12¼	324 2	23	1142 10
4½	43 11	8½	156	12½	337 8	24	1244 2
4¾	48 11	8¾	165 6	12¾	351 2		

To ascertain the weight of one foot of *Cable-laid Rope*, multiply the square of the circumference by ·036.

Table showing the Weight of Ten Fathoms of Tarred Ropes and Cables.

Size in Inches.	Weight. lbs. oz.	Size in Inches.	Weight. lbs. oz.	Size in Inches.	Weight. lbs. oz.	Size in Inches.	Weight. lbs. oz.
1	2 5	5	59 1	9	191 11	13	399 14
1¼	3 10	5¼	65 3	9¼	202 6	13¼	415 6
1½	5 5	5½	71 8	9½	213 8	13½	431 4
1¾	7 3	5¾	78 3	9¾	224 14	13¾	447 6
2	9 7	6	85 3	10	236 9	14	463 12
2¼	11 15	6¼	92 6	10¼	248 9	15	532 8
2½	14 12	6½	99 14	10½	260 14	16	605 12
2¾	17 12	6¾	107 12	10¾	273 6	17	683 14
3	21 4	7	115 14	11	286 4	18	766 12
3¼	24 14	7¼	124 4	11¼	299 8	19	854 4
3½	28 14	7½	133 3	11½	312 14	20	946 9
3¾	33 3	7¾	142 1	11¾	326 11	21	1043 11
4	37 12	8	151 6	12	340 12	22	1145 6
4¼	42 11	8¼	161	12¼	355 1	23	1251 14
4½	47 14	8½	170 14	12½	369 11	24	1363 3
4¾	53 4	8¾	181 1	12¾	384 11		

To ascertain the weight of a fathom of *Tarred Ropes and Cables*, multiply the square of the circumference by 2·13 and divide by 9. Or, multiply the square of the circumference by ·04, and the product is the weight of a foot.

CAPACITY IN GALLONS OF SHIP'S WATER TANKS.

Showing the Capacity in Gallons and Decimal parts of Gallons, of Ship's Water Tanks, Cisterns, Wells, Reservoirs, &c., from 3 to 20 feet in *Diameter*, and from 4 to 6 feet, or to any *Depth*, — by adding together the products of any two lengths, or doubling or multiplying any one length. Suppose a Ship's Water-tank, or a Cistern, is 4 feet in diameter, and 9 feet in length, then opposite 4 in the left hand column, and under 4 and 5 is found 376. and 470., which sums added together make 846 gallons; if 16 feet in length, then 376. multiplied by 4 equals 1504. gallons. The 1st col. gives the diameters, and the tops of the columns the lengths.

D. *ft.*	Length. 4 *ft.*	Length. 4¼ *ft.*	Length. 4½ *ft.*	Length. 4¾ *ft.*	Length. 5 *ft.*	Length. 5¼ *ft.*	Length 5½ *ft.*	Length. 5¾ *ft.*	Length. 6 *ft.*
3	211.5	224.7	237.9	251.1	264.3	277.6	290.	304.	317.2
3¼	248.2	263.7	279.2	294.7	310.2	325.7	341.3	356.8	372.3
3½	287.8	305.8	323.8	341.8	359.8	377.8	395.8	413.8	431.8
3¾	330 4	351.1	371.7	392.4	413.1	433.7	454.4	475.	495.7
4	376.	399 5	423.	446.5	470.	493 5	517.	540.5	564.0
4¼	424.4	451.	477.5	504.	530.6	557.1	583 6	610.1	636.7
4½	475.8	505.6	535.3	565.1	594.8	624.6	654.3	684.	713.8
4¾	530.2	563.3	596.5	629.6	662.7	695·9	729.	762.2	795.3
5	587.5	624.2	660.9	697.6	734.4	771.1	807.8	844·5	881.2
5¼	647.7	688.2	728.7	769.1	809.6	850.1	890.6	931.1	971.6
5½	710.8	755.3	799.7	844.1	888.6	933·	977.4	1021.9	1066.3
5¾	776 9	825.5	874.1	922.6	971.2	1019.8	1068.3	1116.9	1165.4
6	846.	898.9	951.7	1004.6	1057.5	1110.4	1163.2	1216.1	1269.
6¼	918.	975.3	1032.7	1090.1	1147.5	1204.8	1262.2	1319.5	1377.
6½	992.9	1054.9	1117.	1179.	1241.1	1303.1	1365.2	1427.3	1489.3
6¾	1070.7	1137.6	1204.5	1271.5	1338.4	1405.3	1472.2	1539.2	1606.1
7	1151.5	1223.5	1295.4	1367.4	1439.4	1511.3	1583.3	1655.3	1727.3
7¼	1235.2	1312.4	1389.6	1466.8	1544.0	1621.2	1698.4	1775.6	1852.8
7½	1321.9	1404.5	1487.1	1569.7	1652.4	1735.	1817.6	1900.2	1982.8
7¾	1411.5	1499.7	1587.9	1676.1	1764.3	1852.6	1940.8	2029.	2117.2
8	1504.	1598.	1692.	1786.	1880.	1974.	2068.	2162.	2256.0
8¼	1599.5	1699.4	1799.4	1899.4	1999.4	2099.3	2199.3	2299.3	2399.2
8½	1697.9	1804.	1910.1	2016.2	2122.4	2228.5	2334.6	2440.7	2546.8
8¾	1799.2	1911.7	2024.1	2136.6	2249.1	2361.5	2474.	2586.4	2698.9
9	1903.5	2022.5	2141.5	2260.4	2379.4	2498.4	2617.4	2736.3	2855.3
9¼	2010.7	2136.4	2262.1	2387.8	2513.4	2639.1	2764 8	2890.5	3016.1
9½	2120.9	2253.5	2386.	2518.6	2651.1	2783.7	2916.3	3048 8	3181.4
9¾	2234.	2373.6	2513.3	2652.9	2792.5	2932.1	3071.8	3211.4	3351.0
10	2350.	2496.9	2643.8	2790.7	2937.6	3084.4	3231.3	3378.2	3525.1
10¼	2469.	2623.3	2777.6	2932.	3086.3	3240.6	3394.9	3549.2	3703.7
10½	2590.9	2752.8	2914.8	3076.7	3238.7	3400.6	3562.5	3724.5	3886.4
10¾	2715.3	2885.5	3055.2	3227.9	3394.7	3564.5	3734.2	3903.9	4073.7
11	2843.5	3021.3	3199.	3376.7	3554.4	3732.2	3909.9	4087.6	4265.3
12	3384.1	3595.6	3807.1	4018.6	4230.1	4441.6	4653.1	4864.6	5076.1
13	3971.6	4219.8	4468.0	4716.3	4964.4	5212.7	5460.9	5709.2	5957.4
14	4606 1	4894.0	5181.9	5469.8	5757.6	6045.5	6333.4	6621.3	6909.2
15	5287.6	5618.1	5948.6	6279.1	6609.6	6940.	7270.5	7601.	7931.5
16	6016.2	6392.2	6768.2	7144.2	7520.2	7896.2	8272.2	8648.2	9024.3
17	6791.7	7216.2	7640.6	8065.1	8489.6	8914 1	9338.6	9763.1	10187.5
18	7614.2	8090.1	8566.	9041.9	9517.8	9993.7	10469.6	10945.4	11421.3
19	8483.7	9014.0	9544.2	10074.4	10604.7	11134.9	11665.2	12195.4	12725.6
20	9400.3	9987.8	10575.3	11162.8	11750.4	12337.6	12925.4	13512.9	14100.4

THE

MERCHANT'S ASSISTANT

AND

COMMON CARRIER'S GUIDE:

CONTAINING THE LIABILITIES OF

SHIP-OWNERS, SHIPMASTERS,

RAILROAD COMPANIES, OWNERS OF STEAMBOATS,

FERRYMEN, CANAL-BOATMEN, EXPRESS-MEN, STAGE-COACHMEN, HACKMEN, CABMEN, TRUCKMEN, CARMEN, HANDCARTMEN;

AND THE LAWS RELATING TO

MARINE & INLAND INSURANCE,

CONSIGNOR & CONSIGNEE, COLLISIONS,

CHARTER-PARTIES — FREIGHT — BILL OF LADING — BOTTOMRY & RESPONDENTIA—DELIVERY OF GOODS—DEMURRAGE, &c.

ALSO,

FORMS FOR ADJUSTING GENERAL AVERAGE, SURVEYS OF SHIP, FURNITURE, GOODS — NOTICE OF ABANDONMENT — CHARTER-PARTY, PROTESTS OF SHIPS, STEAMBOATS, &c. BOATMAN'S WAGES TABLES, &c.

BY I. R. BUTTS,

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ADDENDA.

Sale of Goods by Carrier for Freight.

By a decision of the United States Court, (2 Story's Rep. 81,) the Carrier has no right to sell the Goods for the Freight, except in certain cases. This decision is in some States overruled by Statute, which regulates the time and manner of Sale.

"In one case, where the master was, by his agreement with the shippers, to deliver the cargo at a place designated, but upon his arriving there the consignee refused to receive it, it was held, that, as the cargo was not of a perishable nature, the master was bound to land it at the place designated, and store it for the benefit of the shippers, and could not carry it to another port, nor sell it, although it could not be sold at the port designated."

"In this case, the cargo could have been landed at Velasco, which was the port of destination. There was no necessity of any sale as the cargo was not *perishable*, and therefore the sale would be unjustifiable on the part of the master; since it would not have been a sale of necessity. The cargo might have been landed and stored, and kept until the charterers in New York could have received information, and given orders as to what should be done with it. Assuming that a lien existed, still it is perfectly clear, by the language of the charter party, that the freight was payable 'on delivery of the cargo at Velasco.' So that until a right delivery on shore, no freight could accrue due. But no right could exist, on the part of the master to sell the cargo, unless it was perishable, and might otherwise have been lost or perished."

If the consignee cannot be found, or when found refuses to accept the goods, or if he accepts but refuses, or is unable to pay the freight—the master still has his remedy over against the shipper.

So, if the Statute, or the necessity of the case, gives the master the right to sell, and the goods do not bring as much as the freight, the master has his remedy over against the shipper for the balance.

When the regulations of the revenue require the goods to be deposited in the public warehouse, the master may enter them in his own name, and thus preserve his lien.

Freight, or Passage Money, paid in Advance.

"When freight, or passage money, is paid in advance, and neither vessel or goods reach the place of destination, it shall be repaid, unless there be a special agreement to the contrary." 3 Pick. 20.

Parker, C J., in delivering the opinion of the Court, said, "It is sufficient then to say, that by reference to the opinion of Chief Justice Kent, (3 Johns. R. 335) and the note of Mr. Justice Story, (Story's Abbot,) it will be found to be the established law of maritime countries on the continent of Europe, that '*freight is the compensation for the carriage of goods, and if it be paid in advance, and the goods be not carried by reason of any event not imputable to the shipper, it is to be repaid, unless there be a special reason to the contrary.*'" Ibid.

For further on the Liabilities of Carriers by Sea, see pages 37 to 44 and 92 to 100.

Entered according to Act of Congress, in the year 1850,

BY I. R. BUTTS,

in the Clerk's Office of the District Court of the District of Massachusetts.

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INTRODUCTION.

RESPONSIBILITIES OF MASTERS AND OWNERS.

THE MASTER is the person put in charge and command of a ship during her voyage. The master is an agent with ample powers to represent the owners in the management of the concerns committed to him. They are liable for such engagements as he may enter into for the necessary and usual employment of the ship, and for such acts as he may do in his character of master within this limit. If the owners themselves appear, and make a special contract regarding the service of the ship, the master cannot substitute another on his own authority. Where the authority of the master is questioned, the law on the subject will generally be influenced by the custom of merchants. *Charter-parties* [see page 92] are generally the sole acts of the owners themselves; but the master may be empowered to enter on a charter-party, and to bind the owners; and when he is abroad, this right is inherent in his office. In the case of a general ship, the owners rarely interfere to regulate the engagements with the particular merchants who furnish the cargo, and they are undoubtedly bound by every engagement made by the master relative to the usual employment of such a vessel. When the master binds the owners to repay money borrowed to accomplish repairs, or the price of repairs, stores, and provisions, he becomes, in the first place, himself personally bound, unless he, in express terms, confine the obligation to the owners. "But such a contract made by the owners themselves, or under circumstances which show that credit was given to them alone, gives the creditor no right of action against the master." (*Abbot.*) To render the owners liable, — when supplies are furnished, they must be reasonably proper for the occasion; and when repairs are undertaken, they must be necessary. The general rule on which the master should act is, to restrict himself to those obligations which a prudent owner would himself incur in the circumstances. "The creditor is required to prove the actual existence of the necessity of those things which give rise to his demand. The authority of the master is to provide *necessaries;* if, therefore, a person trust him for a thing not necessary, he trusts him for that which it is not within the scope of his authority to provide." (*Abbot.*) If the master expend money of his own for such purposes, he is entitled to demand repayment. In a home port the authority of the master to incur such obligations may be superseded by that of the owners or a ships-husband; but the master's presumed power warrants individuals in contracting with him, unless they are aware of his being so superseded. The master may hypothecate the ship, or give the creditor a right to a security over it, for the expense of repairs in a foreign but not in a home port. It is the duty of the master, like every other agent, to use his own endeavors for furthering the interest of his constituents in the matter committed to his charge; and the greater importance of the trust calls on him for a corresponding exercise of vigilance and skill as an agent. He is responsible for losses occasioned by his misconduct or blunder.

THE OWNERS should have their vessel, both in hull and rigging, suited for the voyage, and for the safe keeping of the species of cargo contracted for or received on board. There must be a competent master and a sufficient crew of able seamen. The ship must have on board whatever papers are necessary for her protection and that of her cargo, whether required by the laws of the country she belongs to, or by those of the port of destination, or dictated by international law. There must be no false or fraudulent papers, which may subject the ship to capture or detention. The mercantile customs of the port must be adhered to in regard to the employment of wharfingers, lightermen, &c. in lading. The owners are responsible for theft, or robbery by the crew or any other person. The master previous to sailing must make the necessary clearances at the Custom-house, and pay all the usual charges. When the preliminaries are completed, the master must sail without delay when he weather is favorable, but not till then. A pilot must be employed in those roads, rivers, and narrow seas where such a precaution is enjoined, either by special law or usage. The master must proceed to the place of destination without delay, and without stopping at any intermediate port, or deviating from the straight and shortest course, unless such stoppage is justified by necessity or usage. [See *Deviation* page 72.] If the ship be captured or lost in consequence of deviation, the freighter may recover the prime cost of his goods and the shipping charges. In cases of difficulty and of danger, the master has to keep in view that it is his primary duty to convey the cargo to its place of destination, and that it is only in an extreme case, and when there is scarcely a possibility of accomplishing this object, that he is entitled to act as agent for the freighter, and adopt the course that seems to involve the least sacrifice to his property. [See *Freight*, page 95.] On arrival at the port of destination, the ship must be securely moored or anchored, and all papers delivered, and other requisites performed, in accordance with the customs regulations and the laws of the place.

Act of Congress—1851.—"Owners are not liable for any loss or damage to goods, by reason of any fire happening on board the vessel, unless such fire is caused by the design or neglect of such owners, except the parties so contract. Owners are not liable for loss or damage to any gold, gold-dust silver or other precious metals, jewelry, bills of any bank, diamonds, or other precious stones, without, at the time of lading, their nature and quality be declared in writing, and the same be entered on the bill of lading therefor. Nor, if so notified and entered, shall the owners be liable beyond the value and character of the goods so notified and entered.

"The liability of owners for any embezzlement, loss or destruction, by masters, officers, mariners, &c., of any property or goods, or for any loss by collision, or any other loss accruing without the privity of the owner, shall in no case exceed the value of the ship and her freights then pending.

"The charterer of any vessel, in case he shall man, victual, and navigate her at his expense, or procurement, shall be deemed the owner within the meaning of the act. Nothing in the preceding sections shall take away the remedy to which any party may be entitled, against the master, officers or mariners, on account of any embezzlement or loss, &c ; or on account of any negligence or fraud of such master, officers or mariners.

"Persons shipping oil of vitriol, unslaked lime, inflammable matches or gunpowder, without delivering a note in writing to the master or mate, declaring the nature and character of such merchandize, shall forfeit to the U. S. $1000

This act does not apply to any vessel used in inland navigation.

COMMON CARRIERS.

CHAPTER I.

GENERAL LAW IN RELATION TO CARRIERS.

WHO *are Common Carriers?* Every person undertaking to carry goods by land or water, *for hire*, as a business, and not as a casual employment, is a *Common Carrier*.

A person who should carry goods occasionally, not as a business, but as a casual employment, or who should perform the carriage without recompense, would not be liable as a *Common Carrier*, for the safety of the goods, but he would be deemed a bailee, being responsible only for ordinary care and diligence. (See *Bailee*, p. 45.)

It is not necessary, however, to render a person liable as a Carrier, that a specific sum should be agreed upon for carriage; if he is in the habit of carrying goods for hire, an agreement to pay a reasonable compensation for the transportation will be presumed from the delivery of the goods to him.

Common Carriers by Land are the owners of railroads, stage-coaches, stage-wagons, omnibuses, express-wagons, &c.; also, wagoners, teamsters, carmen, hand-cartmen, truckmen, porters, and all others engaged in the transportation of goods for hire.

Mere *Passenger Carriers*, who do not pretend to carry baggage, are not liable as Common Carriers. Thus, the proprietors of omnibuses, running between different sections of our large cities, and who hold themselves out to the public solely as carriers of passengers, would not be liable as Common Carriers, though they might occasionally carry parcels, as a matter of favor for their customers. So hackney-coachmen are not regarded as Com-

mon Carriers; but cab-drivers and owners of coaches, whose business consists in carrying passengers and their baggage, from the different steamboat landings and railroad depots, to various parts of the city, would probably be answerable as Common Carriers for the safety of such baggage; indeed, it would be strange were it not so, as, oftentimes, the sole inducement for a man to ride with them is to get his baggage carried. The liability of passenger carriers will be considered hereafter. (See p. 17.)

Common Carriers by Water are the owners and masters of ships, steamboats, ferry-boats, canal-boats, and all kinds of vessels belonging to foreign, coasting, or inland navigation, engaged in carrying goods for hire; this includes canal-boatmen, ferry-men, lighter-men, hoymen, bargemen, &c.

We shall speak of the Rights and Duties of *inland carriers*, which class consists of *carriers by land*, and also *the owners of steamboats, ferries and canals*, and then of the *rights and duties of carriers by sea.*

Duty of Common Carriers to receive Goods. — A Common Carrier is bound to receive all goods which are offered for the port of his destination, from any person who tenders him the regular or a reasonable compensation for their carriage. He can only refuse where his vehicle is full; or where he has not the proper conveniences for their carriage; or where the goods offered are not such as he is accustomed to take; or where they are of such a nature that their transportation will expose him to a real danger or violence.

He may regulate the place where, the time when, and the manner in which, he will receive goods for transportation; and he is not bound to receive goods until he is ready to carry them. But if he accepts goods for carriage, his liability will not be varied, from the fact that they were received at a different time or place from that established by him for the reception of goods. He may demand his freight at the time the goods are offered, and he has a right to demand a price for carriage proportioned to the risk run. He cannot, however, demand more than a reasonable compensation, and if he has established a regular price, the tender of that to him will be sufficient.

If he refuse to receive goods offered for carriage, unless for some one of the reasons mentioned above, he will be liable to an action for the damage occasioned thereby; and it will be sufficient for the person offering the goods, to maintain his action, to aver and prove that he was ready and willing to pay the regular or reasonable compensation for their carriage.

In regard to the *baggage* of a passenger, the price paid by him for his fare is deemed to include a compensation for the carriage of his baggage.

Extent of the Duty and Liability of Common Carriers. — A Common Carrier is bound to carry the goods safely, and deliver them to the proper person, without any loss or injury, except such as may be occasioned by the act of God, the public enemy, or the fault or fraud of the owner. He is regarded as an insurer of the property committed to his care, and if it is lost, stolen, or injured in any way, except as above, he is liable.

This law, making a Common Carrier an *insurer*, is enforced on principles of public policy, to prevent fraud and collusion with thieves and robbers; the owner of the goods, not being generally in a situation to oversee and protect his property, having placed it in the possession and under the protection of the Carrier.

He is not Liable for a Loss or Injury occasioned by the "Act of God," and by the "Act of God," is meant something in opposition to the act of man, such as storms, lightning, tempests, and inevitable accidents, not resulting from human agency. If the loss or injury has been caused by the act of man, although it was inevitable, the carrier is liable.

If the goods have been destroyed or swept away by rain and floods, the circumstances attendant upon the loss must be regarded in order to determine whether it has been occasioned by the act of God or the act of man. If the carrier has neglected to provide cart-clothes and proper coverings for the goods; if he has gone out of his way to meet the danger; if he has travelled by unusual roads, or crossed a plain, subject to inundations, when he might have kept the high grounds and been safe, the loss thus occasioned by the rains and floods is a loss from the act or negligence of man, and the carrier is conse-

quently responsible. In short, if the loss or injury be occasioned by an act, which may properly be called an act of God, yet if, by the exercise of reasonable prudence and foresight on the part of the carrier it might have been avoided, he will be liable.

He is not Liable for Loss or Injury occasioned by the Public Enemy, and by the public enemy is to be understood enemies at open war, and not merely robbers, thieves, or other private depredators. Losses occasioned by robbery on the highway, or by the depredations and violence of mobs, rioters, insurgents, and other felons, are not deemed losses by enemies; but losses by pirates on the high seas are so deemed, for pirates are the common enemies of mankind.

He is not Liable for a Loss or Injury occasioned by the Fraud, Misrepresentation, or Concealment of the Owner. — If the owner is guilty of any fraud or imposition in respect to the carrier, by treating the goods as of little value, or by packing and sending them so carelessly and in such manner as to induce the carrier to take less care of them than he otherwise would, and they are thereby lost, he will not be liable, especially if this concealment of their true value was practised for the purpose of getting them carried at a less rate.

Where the owner represents to the carrier that the package is of a particular value, he cannot recover from him in case of a loss, at the most, any amount beyond that value; and in the case of a gross misrepresentation probably the carrier would not be liable to any extent.

Where, however, any thing is delivered to a carrier for conveyance, it is the duty of the carrier to ask such questions about it as may be necessary; if he ask no questions, and there be no fraud or concealment practised for the purpose of deceiving the carrier, he will be liable for its safe carriage and delivery. The person delivering the goods is not bound to disclose what they are unless asked by the carrier. The carrier may ask questions, and if they are answered improperly, so as to deceive him, then he will not be liable.

Effect of Notices that "All Baggage will be at the Risk of the Owners," &c., and to what Extent Carriers may Limit their Liabilities. — The liability of the car-

riers cannot be changed or varied by them by means of any express or implied contract with the owners. They will be responsible for all losses not occasioned by the act of God, the public enemy, or the fault of the owner, notwithstanding they have given the owner notice that they will not be responsible. Notices that "*All baggage is at the risk of the owner*," or that "*The proprietors of the railroad, (or other conveyance,) are not responsible for goods left with them for transportation*," or any exceptions, as "*danger of fire, &c., excepted*," are of no effect, the carrier's liability remaining unchanged.

They may, however, make all reasonable rules and regulations for their safety and protection. They may prescribe the manner, place, and time of receiving goods; may regulate the mode of entering them, and the minuteness of the description to be given; and they may charge a rate of carriage proportioned to the value of the article tendered to them for conveyance.

They may, therefore, inquire the value of any parcel left with them for conveyance, and charge accordingly, and the owner will be bound by his representation of value. And the carrier may so far limit his liability as to refuse to be responsible for any loss, unless the value of the goods is made known at the time they are entered, and a corresponding price is paid for their carriage.

To obviate the inconvenience of asking questions in each case, and the difficulty of proving the statements made on such occasions, it is usual for carriers to resort to the expedient of advertising in newspapers, and posting on the walls of their offices and depots, public notices to the effect, *That they will not be liable for the loss of money and valuables unless they receive notice of their existence, nor for the loss of ordinary goods and chattels beyond a certain amount, unless the value of such goods is declared and entered at the office, and an increased rate of remuneration paid for their conveyance.* And it is now well settled that a carrier may, by these notices, release himself from his responsibility as an *insurer*, unless he is paid an increased remuneration to cover the risk.

In order that a carrier may avail himself of such a notice, he must be able to prove that the person hiring him

had knowledge of it. The only safe course for the carrier is to announce his terms to every individual who offers goods, and at the same time place in his hands a printed notice thereof. It is usual for some passenger carriers to have printed on their checks their regulations in regard to baggage.

The effect of such notices, in case a person having knowledge of them fails to comply with their terms, is to exonerate the carrier from any loss, where neither he nor his servants have been guilty of negligence. If the goods are lost through their negligence, he is still liable.

Delivery to the Carrier and the Commencement of his Liability. — The liability of the Common Carrier commences as soon as the goods are delivered to him or his agent; and in order to charge him with them, it is generally necessary to prove an actual delivery to him, or to some person acting for him.

A Common Carrier may, at the same time, be a warehouseman, and if he receives goods to be forwarded, but not until he receives further instructions, and the goods are stored in his warehouse, and are there destroyed, his liability for them will be that of a warehouseman, and not of a carrier. If, however, he places them in the warehouse, not to await further instruction from the owner, but simply to facilitate his business, his liability as a carrier commences with the delivery of the goods to him. (See page 48.)

It is not necessary to a delivery that the goods should be entered upon the freight list. Neither is it material that the goods have not been delivered at the usual time or place, established by the carrier for the reception of goods, if the carrier has accepted them; for his liability is fixed by an actual acceptance of the goods.

This necessity of proving a personal delivery of the goods to the carrier, or his servants, in order to charge him with a loss, may be controlled and varied by his usage and custom in this particular. It is sufficient to prove that they have been delivered in the usual and customary manner. If the carrier, upon the goods being tendered him, directs the person to deposit them in a particular place, and he does so, that is a delivery. So

if the goods are delivered at a particular place, according to the usage of business, and notice of the delivery is given to the carrier, and he does not object, that is a delivery. The carrier may also give notice where he will receive goods, or at what place they may be deposited, and he will be liable for the loss of any goods delivered or deposited in conformity with such notice. But leaving goods in the yard of an inn, where the carrier puts up, or on the wharf, where the vessel lies, without giving the carrier or the master any notice that the goods have been so left for carriage, will not amount to a delivery.

A delivery to a servant of the carrier, who is in the habit of receiving packages, is a good delivery. The liability of carriers for the acts of their servants will be considered hereafter. (See page 14.)

The Carriage of the Goods. — The carrier is bound to use reasonable diligence and despatch in the transportation of the goods; and he must proceed without deviation from the usual and ordinary course to the place of destination. He will not be answerable, however, for a delay in the transportation of the goods occasioned by any accident or misfortune, even if it does not amount to an act of God, or of the public enemy, provided he has exercised reasonable diligence and foresight to avoid it.

Duty of the Carrier to Deliver, and Termination of his Risk. — The Common Carrier is bound not only to carry the goods safely, but also to *deliver* them safely to the person entitled to receive them. The delivery of the goods is as much a part of his duty as the carriage; and nothing will excuse him but the act of God, the public enemy, or the fault of the owner.

The delivery must be made within a reasonable time. What is a reasonable time, must of course depend upon the difficulties and obstructions which the carrier may meet with during the transportation.

The general rule is, that nothing will free the carrier from liability but an actual delivery to the person to whom the goods are sent. It is not sufficient for him to leave the goods at the place where he stops; he must take them to the residence or place of business of the consignee.

The carrier has a right, however, to regulate the place of delivery by an express contract with his employer; or if it is the course of business to leave the goods at specified places, he may land them there, and give the consignee notice of the arrival and place of deposit. In the absence of any express contract, however, the carrier cannot excuse himself from making a personal delivery of the goods, unless he can show there is a usage to the contrary, so well known and long established, as to render it highly probable that the person dealing with the carrier had knowledge of it. No such usage has been established, I believe, except in the case of railroads, and certain water carriers.

Where the delivery is not made to the consignee, in consequence of some usage to the contrary, the liability of the carrier continues until after *notice* of the arrival of the goods and the place of their deposit has been given to the consignee, and a reasonable time has elapsed for him to take possession of and remove the goods. A notice, even, is not necessary, if the carrier can prove that the uniform usage, and course of business in which he is engaged, is to leave the goods at his usual stopping places, *without notice* to the consignee, and that such usage is of long continuance and notoriety.

The carrier must see, at his peril, that the merchandize is *delivered to the right person.* If the goods are delivered to the wrong person, although upon a forged order, he will be liable. It is the duty of passenger carriers to see that each passenger gets his trunk or baggage at the end of his journey.

The carrier, in order to discharge himself from liability, must tender the goods, *at a proper time and place.* Thus a tender of money, at a bank, after bank hours, or of goods to a merchant, after business hours, and when his men have left the store, is not sufficient. The carrier in such case must keep the goods, and tender them again at a proper time. So he must tender the articles at the residence, or place of business of the consignee, according to their nature. It sometimes happens that upon the arrival of the carrier at the place of destination, the consignee refuses to receive the goods, or is dead, or absent, or is not known and cannot, after due

inquiries, be found; and in such case, although the liability of the carrier, as such, is at an end, yet he is bound to take reasonable care of the goods till he receives fresh orders from the owner, and he will be liable, if they are injured by reason of any negligence on his part in keeping them. In these cases, the carrier may discharge himself from further responsibility, by placing the goods in store with some responsible third person, at the place of delivery, for and on account of the owner, giving him due notice thereof. When so delivered, the storehouse keeper becomes the bailee and agent of the owner in respect to such goods.

The carrier has a right to demand his freight, upon tendering the goods, and if it is not paid, he is not bound to give up the goods; but he may store them in his warehouse, or place of business, and he will thenceforward be liable to exercise reasonable care for their safety. (See page 19.)

Termination of Liability, where Goods are to be carried beyond the Carrier's Line. — In the absence of any express contract, if a Common Carrier receives goods directed to a place beyond the limits of the place to which he is accustomed to carry and deliver, his liability does not terminate upon the delivery of the goods by him, at the termination of his line, to some other carrier to complete the transportation, but continues until the goods are safely delivered at the place of their destination. If, therefore, the carrier wishes to limit his liability to his own line, he must give notice to the owner or person delivering the goods, that his liability will cease, upon their delivery by him, at the termination of his route, to some other suitable carrier. No notice need be given by the carrier, where such a delivery is in accordance with a long established usage known to the owners of the goods.

Liability of Common Carriers for the Acts of their Agents or Servants. — Common Carriers are not only responsible for their own acts, but for those of their servants, porters, warehouse-receivers, &c., who are considered as the carrier's servants, employed by him in the execution of the principal undertaking; and no agreement between the carrier and his servants affects third

persons. They are liable for the misconduct, want o skill, or negligence of their servants; it is, therefore, no excuse for a carrier that the injury was caused by his servant.

If a person makes a private bargain with the servant of a carrier, by which he and not the carrier is to receive the compensation for the carriage of the goods, the carrier will not be liable for their safe carriage. The carrier cannot, however, exonerate himself from liability on account of the negligence, want of skill, or carelessness of his servants and agents, by any private arrangement by which the servant is to have the compensation paid for the carriage of certain kinds of goods.

A delivery to the servant of the carrier, who is authorized or accustomed to receive goods, is a delivery to the carrier. In short, any act of the carrier's servant or agent, within the scope of his authority, will bind the carrier. If, however, the servant exceeds his authority, the carrier will not be liable. Thus, if the servant should receive and undertake the carriage of goods of a different description from those which he is authorized or accustomed to carry, and such goods should be injured, the carrier would not be liable.

It is not necessary, however, that the goods should be precisely of the same kind and description, that had before been carried for hire, to make the carrier liable for a delivery to his agent; provided they are such as the person delivering them had reason to suppose are fairly within the ordinary scope of the agent's authority to receive and transport.

Liability of Carriers as Partners and Joint Proprietors. — Where an association of common carriers is formed, for the purpose of carrying goods or passengers, each member receiving a certain share of the profits, they are treated as partners, and all the members of the association are liable for the contracts made by any one of them, in the regular and usual course of business, as, also, for goods lost or injured on any part of the route whether all are interested in the means of conveyance or not.

Thus, if for the purpose of establishing a continuous line of communication between distant places, several

individuals or companies should associate themselves together, some furnishing vehicles and agents, and taking charge of one part of the line, and others of other parts, yet each member would be liable with the others jointly, for any loss, although the loss happened on a portion of the road, over which he had no control.

Rights and Duties of the Passenger Carrier.

1st. *His Duty to Receive all Persons Applying.* — A common carrier of passengers is bound to receive all persons applying for a passage; provided there is room for them, and they are willing and offer to pay the regular fare. He may refuse where he has not sufficient room; or where the person applying refuses to comply with the reasonable regulations of the carrier; or is guilty of gross and vulgar habits; or whose character is bad; or whose object is to interfere with and injure the carrier in his business.

He may refuse to receive a passenger, if he has not room; for he must not overcrowd his vehicle, and if he does, a passenger who has engaged his seat may refuse to take it, and sue the carrier for damage. If several engage to have seats together, they cannot be made to occupy separate seats.

He may refuse to receive a person of notoriously bad character or habits, or who is disorderly or intemperate; but, having received such a person in his carriage, he cannot turn him out, or treat him disrespectfully, so long as the passenger conducts himself with propriety.

He may refuse to carry a person whose object in obtaining a passage is to interfere with and injure his business. But he has no right to make a contract with the proprietor of another line, running to another place, that he will not receive passengers coming from such place, unless they come by the line of the proprietor with whom he has contracted; and he cannot refuse to take a passenger, because he came from such place by a different line.

2d. *Duty to Provide for the Safety and Convenience of Passengers.* — The liability of the passenger carrier is not the same as that of the carrier of goods. He does not insure his passengers against all injuries not occa-

sioned by the act of God, or the public enemy. If an injury happens to a passenger, by mere accident, without any fault on the part of the carrier, or his servant, he is not liable. Passenger carriers are bound, however, to the utmost care and diligence of very cautious persons for the safety of their passengers; and will be answerable for any injury caused by the slightest fault or neglect on their part, or on the part of their servants.

Great care must be taken to provide strong and well made vehicles, and to furnish them with all necessary trappings and equipments. The carrier's vehicles must, in other words, be *road-worthy*. If an accident happens by reason of a defect in any part of the carriage or equipments, which might have been discovered by a most careful and thorough examination, he will be liable. He must have the vehicle and equipments frequently examined to see that they are safe; and such examination must be careful and thorough. Thus, in the case of stage-coaches, it has been held that the examination must be made previous to every journey.

The carrier must provide good and steady horses, or strong and well constructed machinery, as the case may be. He must see that the vehicle is not overloaded, nor improperly loaded. He must provide a sufficient number of skilful and experienced servants, of good character and temperate habits; and he will be liable for any injury caused by the fault of his servants, and also for all the acts of his servants, where those acts are within the scope of their authority.

The carrier must not start until the passengers have time to be seated; and he must prosecute his journey by the usual and customary route. He must not drive at an immoderate speed; and if an accident happens in consequence of his unnecessarily passing along unsafe parts of the road, or through narrow or dangerous passages, or by reason of his taking the wrong side of the road, he would be liable. Before passing over a dangerous place, the carrier should inform the passengers of the extent of the danger.

The carrier must observe the law or custom of the road as to the meeting and passing of vehicles, and if a collision takes place by reason of his negligence in this

respect, he will be liable. He must, however, deviate from the law of the road, in a case where, by pursuing it, a collision would ensue.

If by the fault of the carrier or his servant, the passengers are placed in such a state of peril as to be justly alarmed for their safety, and they leap from the vehicle and are hurt, the carrier will be liable, although if the passengers had remained in the vehicle, they would have been safe.

The carrier must stop at the usual places, and allow the usual intervals for refreshments; and he cannot vary and annul these accommodations at his pleasure, as every passenger is understood to contract for the usual reasonable accommodations.

He must convey the passengers to their places of destination, and leave them at the usual stopping-places. If he agrees to take a passenger to a particular place, he must do it; and an accident happening to his vehicle will not excuse him, for in such case he is bound to provide another conveyance. If it is the custom to carry passengers to their homes or lodgings, the carrier must do it. It is also his duty to see that each passenger gets his trunk or baggage at the end of his journey.

3d. *Rights of Passenger Carriers.* — The passenger carrier has his rights as well as his liabilities. He may demand his fare in advance, and refuse to receive a passenger unless the fare is so paid. He has a lien upon the baggage of the passenger for his fare, and may detain it until the fare is paid; he has no lien, however, upon the person of the passenger or upon the clothes he has on. The carrier may make and enforce such regulations as are reasonable and necessary either for the convenience and comfort of the passengers, or for the successful prosecution of the carrier's duties.

Liability of Passenger Carriers for the Baggage of their Passengers. — The passenger carrier is bound to carry the baggage of the passenger safely, and if any loss or injury happens to it, he will be liable unless it was caused by the act of God, the public enemy, or the fraud of the owner. (See pages 7, 8.) He is thus liable, although the passenger has paid no distinct price for the

transportation of his baggage; for the price paid by the passenger for his fare is considered as including a compensation for carrying his baggage.

His liability commences with the delivery of the baggage to him or to his servant. If it appears that the baggage was never delivered to the carrier or his servants, nor in any way entrusted to his or their keeping; but that it was kept in the hands and under the care of the passenger, the carrier will not be liable.

His liability terminates with the delivery of the baggage to the right person. The carrier must see that each passenger gets his baggage at the end of his journey, and the whole duty in this respect rests with him. The passenger need not expose his person in a crowd or endanger his safety, in the attempt to designate or claim his property; and if the carrier delivers the baggage to a wrong person, or by mistake, or even upon a forged order, he will be liable. The exercise of ordinary care in marking the baggage, entering it upon a way-bill, and delivering a check ticket to the owner, renders the discharge of this duty easy.

If the delivery be made in conformity to a well established and notorious usage, known to the passenger, the carrier will be discharged.

In regard to railroads and steamboats, passengers must demand their baggage within a reasonable time, otherwise the strict liability of the carrier as such ceases. He must, however, in such case, store the baggage and take reasonable care for its safety.

The extent to which carriers may limit their liability, and the effect of notices that "All baggage is at the risk of the owner," has already been considered. (See p. 9.)

The carrier has a lien upon the baggage of the passenger for his fare, and may detain it until the fare is paid.

The rule that the price paid by the passenger for his fare, renders the carrier liable for his baggage, does not extend to anything beyond ordinary baggage, or such things as a traveller usually carries with him for his personal convenience in the journey. It neither includes money nor merchandize. It will include, however, all such articles as are usually carried by travellers for their convenience or amusement. Thus, it is not confined to

wearing apparel, brushes, razors, writing apparatus, and the like, but includes books carried for his instruction or amusement, also his gun or fishing tackle. So a watch is part of a traveller's baggage, and his trunk is a proper place to put it in; so money to pay travelling expenses may be deemed baggage.

Any articles, therefore, which are not strictly baggage must be entered by the owner as freight, and a distinct price paid for the carriage, otherwise the carrier will not be liable.

The Carrier's Lien upon the Goods for his Fare or Freight. — The carrier, as we have seen, has a right to demand his pay upon receiving the goods. Where he does not receive his pay in advance, he has a *lien* upon the goods for his pay, that is, a right to detain the goods until he receives or is tendered his hire for their conveyance.

The carrier has no right of lien for anything beyond the price of the carriage of the goods conveyed. He cannot detain them until he has received, not only the price charged for their conveyance, but also the payment of a general balance due him, for the conveyance of other goods on some former occasion.

Where a part of the goods have been delivered to different persons the carrier cannot retain the residue, so as to make one consignee pay freight for what was delivered to another, although the goods formed originally but one entire consignment. But when the whole is to be delivered to one person, under a single consignment, then, although a part has been delivered, he may retain the residue, until the freight for the whole be paid him.

A common carrier of passengers and baggage has a lien upon the baggage, for the payment of the price of the carriage of the passenger, as well as of his effects; but he has of course no right to detain the person of the passenger, or the clothes he is actually wearing.

If the carrier once parts with the possession of the goods, he loses his lien. But if he loses the possession of them by fraud, the lien revives if possession is recovered.

Common Carriers' Charges. — These must be fair and reasonable, according to the ordinary and customary rate

of remuneration. They cannot charge more than the customary hire, but there is nothing to prevent them from charging less. If a person sends to a carrier's office to know his rate of charge, the carrier is bound by the representations there made by his clerk, and if goods are sent upon the faith of such representations, the carrier cannot charge more than the sum named, although the clerk may have inadvertently fallen into a mistake.

CHAPTER II.

LIABILITIES OF FERRYMEN, CANAL BOATMEN, STAGE-COACHMEN, WAGONERS, & CARMEN.

Ferrymen, who carry goods or passengers as a business, are liable to the same extent as other common carriers or passenger carriers. It will be sufficient, therefore, to direct the reader to that part of the work where the general subject is treated. (See Chapter I.)

Ferrymen are the legal judges whether it is safe to pass over or not. They must have their boats so made, that all drivers and carriages can easily enter them. It is their duty to regulate the mode in which carriages are to be received into a boat; and if a person request direction and assistance, and the ferryman refuses, but tells him to proceed, and he thereupon enters the boat, and the goods are lost or damaged in the attempt, the ferryman is answerable; and as soon as a carriage is fairly on the slip, or drop of the boat, though it be driven by the owner's servant, it is considered to be in the ferryman's possession, and he is responsible for any subsequent loss or damage that may happen to it, or to the horses.

Canal-boatmen are also common carriers, and their rights, duties and liabilities are the same as those of other carriers. (See Chapter I.)

Where it is customary to leave goods on the dock, near a canal boat, to be carried, notice of the delivery should be given to the boatmen, otherwise it will not be such a delivery to them as will render them liable. (See p. 10.)

We have seen that carriers must use all reasonable expedition in transporting the goods. If, however, they are

delayed from any cause, which they could not guard against by the exercise of reasonable diligence and foresight, they are not liable. Thus, where the canal freezes up, and occasions delay, the boatmen will not be liable for such delay; they are, however, bound to exercise due diligence in accomplishing the transportation as soon as the obstruction is removed. In the meantime, they must not be guilty of any negligence in taking care of the article detained.

Stage-coachmen, *Wagoners*, *Carmen*, *Handcartmen*, *Truckmen*, *&c.*, are liable the same as other common carriers, for all losses not occasioned by the act of God, the public enemy, or the fault or fraud of the owner. They have, therefore, only to turn to the General Law in Relation to Carriers, to ascertain their duty to receive goods, the commencement, extent, and termination of their liability, and their right to retain the goods until paid for their carriage, &c.

The rights, duties, and liabilities of the *Proprietors of Stage-coaches*, as carriers of goods or parcels, or of passengers and their baggage, are the same as those of other common carriers, or passenger carriers; and it will be sufficient to refer such persons to the first Chapter where the general subject is treated.

CHAPTER III.

LIABILITIES OF RAILROAD COMPANIES.

Obligation *to take Freight, and extent of Liability in relation thereto.* — Railroad Companies, as Common Carriers, are bound to receive all goods offered to the extent of their means of transportation, provided they are such as are usually carried by them, and the person who offers the goods is ready and willing to pay the regular or a reasonable compensation therefor. It is better, in case of a refusal to receive the goods, for the person offering them, to tender the price for carriage, though it has been held, that an averment of a readiness and willingness to pay is sufficient.

They are not bound to receive goods, which they are not accustomed to carry, or when their cars are full, or when the goods are brought at an unseasonable time, or unless the price is tendered.

The goods having been placed in the hands of their agents, they are bound to transport them safely to the place of destination, without unnecessary delay, damage, or loss, unless by act of God, or a public enemy. They are, in fact, regarded as *insurers* of the property committed to their care, and are bound to make restitution for any injury or loss not caused by the act of God, or the public enemy, or the fault of the owner. What is deemed an act of God, or of the public enemy, or the fault of the owner, has already been considered. (See pages 7, 8.)

The duty of Railroad Companies, as to the *delivery of the goods* transported on their roads, is somewhat different from that of other common carriers. The general rule is, that common carriers are bound to make an actual *delivery* of the goods to the person entitled to receive them; but as from the very nature and construction of a railroad, it would be impossible to deliver goods to persons off of the line of the road, without employing other means of conveyance in addition thereto, it has been held that it is sufficient for them to land the goods in their depots or warehouses along the road, and that then their duty as common carriers is at an end.

In consequence, however, of the great amount of goods transported, and belonging to so many different persons, and of the different hours of arrival, by night as well as by day, it is necessary that the goods should be unladed, and deposited in a safe place, protected from the weather, and from exposure to thieves and pilferers.

But, although the liability of Railroad Companies, as Common Carriers, is at an end, when they have deposited the goods, remaining uncalled for on their arrival, in their warehouse or depot, yet they are still liable, *as warehouse-men*, to use all proper care and diligence to prevent the goods coming to any injury or harm. (See p. 48.)

The extent to which companies are liable for the acts of their servants in receiving goods, and in transporting them, will be considered hereafter. (See page 27.)

Their Duty and Liability as Passenger Carriers. — We have seen, that in regard to the carriage of goods, railroad companies are liable for all losses not caused by the act of God or the public enemy; but in regard to passengers their liability is different. They do not warrant the safety of their passengers, but only that they will provide for their safety as far as human foresight and care can go.

They impliedly warrant, that the road is in good travelling order, and fit for use; that their engines and cars are roadworthy; that their engineers, conductors, and other servants, are skilful and competent for the business in which they are engaged; and that, in short, every possible care has been taken to secure the safety of the passengers.

If an accident happens from any negligence on their part, or on the part of any of their servants, they will be liable. And where the accident is caused by a defect in their cars or engine, which might have been discovered and remedied upon the *most careful and thorough examination*, they will be liable. But if the accident arises from a hidden and internal defect, which a careful and thorough examination would not disclose, and which could not be guarded against by the exercise of a sound judgment, and the most vigilant oversight, then they are not liable for the injury, and the misfortune must be borne by the sufferer.

In regard to stage coaches, it has been held, that the vehicle must be carefully examined previous to every journey. What amount of diligence, in this respect, would be required of railroad companies, has never yet, to my knowledge, been decided; but without doubt the utmost care and diligence would be required of them.

Duty to receive Passengers. — Railroad companies are bound to receive all persons who apply for passage, and tender the regular fare, provided they have suitable accommodations. This rule is, of course, subject to the qualification, that the person applying is not an unfit person to be received as a passenger; for they may rightfully exclude all persons of bad character or habits, or whose objects are in any way to interfere with the interest or patronage of the proprietors, or who refuse to obey

all reasonable regulations; and they may rightfully inquire into the habits or motives of passengers, who offer themselves.

It is the right and duty of a company to make such regulations, as shall secure the comfort and convenience of the passengers, and repress and prohibit all disorderly conduct; and all regulations made by the superintendent, tending to that end, may be enforced.

Thus, it has been held, where the passengers are annoyed, or the railroad officers are hindered in the discharge of their duties, by the entrance of innkeepers or hackmen into the depot or upon the platform, for the purpose of soliciting the patronage of the passengers, the superintendent may make a regulation to prevent persons from coming there for that purpose; and if any person, having knowledge of such regulation, should attempt to violate it, he may be ejected from the depot, no more force being used than is necessary for that purpose. And an innkeeper, who, having notice of such regulation, repeatedly violated it, afterwards purchased a ticket, with the intention of entering the cars as a passenger, and the superintendent, not knowing that fact, but believing he had entered the depot to solicit passengers, orders him out, and he does not show his ticket, nor give notice of his real intention, but presses on towards the cars, and the superintendent with his assistants puts him out, using no more force than is necessary, such removal is justifiable.

It is hardly necessary to state, that they have a right to make and enforce reasonable regulations as to the conduct of the passengers, the exhibiting of tickets or passes to the conductors, &c., during the passage.

Where none of the above-mentioned legal excuses exist, they must receive all who require a passage, if they have room. And it will be no sufficient legal excuse, that the company has contracted with another company, that it will not carry passengers applying for passage, on certain days, if they have patronized any other mode of conveyance.

The company have a right to demand the fare at the time the passenger engages his seat; and if he refuse, they may fill up his place with other passengers. They

have also a lien upon the baggage of a passenger for his fare, but not on his person, nor on the clothes he is wearing.

They must not take such a number as to over-crowd the passengers. They are bound to allow the accustomed periods of refreshments on the road; and if a passenger should be improperly left on the road, they would be liable for the damage thus occasioned him.

Liability for Baggage of Passengers. — They are liable for all losses or injuries to the baggage of the passenger, not occasioned by the act of God, the public enemy, or the fault of the owner. This liability is the same, although no distinct price is paid for the carriage of it; as the price paid by the passenger for his fare is considered as including a compensation for carry ng his baggage.

Their liability does not commence until the baggage has been actually delivered to their agents. Thus, if a passenger, instead of delivering his valise to the baggage-master or other suitable agent, should take it with him into the cars, keeping it under his control, the company would not be liable for its loss, as it was never delivered to them or their agents. If, however, it can be shown that the baggage was delivered in the usual and customary manner, that is sufficient.

Their liability does not terminate until the baggage is delivered to the owner. If they should deliver it by mistake, or upon a forged order, to the wrong person, they would nevertheless be liable to the true owner for it. The passenger need not expose his person amidst the crowd usually thronging around the baggage office, on the arrival of the cars at the depot, or endanger his safety in order to point out or claim his property; for it is the duty of the baggage-master to see, at his peril, that the baggage is delivered to the right person. All mistakes may however be easily avoided, by having the freight properly marked when delivered to him, and a check-ticket given to the owner.

A passenger must however demand his baggage within a reasonable time; otherwise the liability of the company, *as carriers*, ceases. But all liability on their part does

not then cease; for they must store it, in their warehouse or baggage-room, and use reasonable care for its safety.

The rule, that the price paid by the passenger for his fare, renders the company liable for his baggage, does not extend to anything beyond ordinary baggage, or such things as a traveller usually carries with him for his personal convenience in the journey. It neither includes money nor merchandize. It will include, however, all such articles, as it is usual for travellers to carry for their convenience or amusement. Thus, it is not confined to wearing apparel, brushes, razors, writing apparatus, and the like; but includes books carried by him for his instruction or amusement, also his gun or fishing tackle. So, a watch is part of a traveller's baggage, and his trunk is a proper place to carry it in; so money to pay travelling expenses may be deemed baggage.

Any article, therefore, which is not strictly baggage, must be entered by the owner as freight, and a distinct price paid for their carriage, otherwise the company will not be liable.

They have a lien on the baggage, as a security for the payment by the passenger of his fare. But they cannot detain the person of the passenger, or the clothes he is actually wearing; and if they once part with the possession of the passenger's baggage, they lose their lien upon it, unless they lost the possession by fraud.

Duty to Provide Faithful and Competent Servants. — Railroad companies are bound to provide servants competent to discharge the duties assigned to them. Their engineers, for instance, must be skilful, and capable of taking care of and driving their engines; so, also, with their conductors, brakemen, switch-tenders, &c.; they must be men every way qualified to perform their respective duties.

They must not employ servants of intemperate habits; and if a servant in their employ is known to have been guilty of intemperance, or to be unskilful, or negligent, or remiss in his duties, he should be immediately discharged; otherwise, if an accident is occasioned thereby, the company will be liable to exemplary damages.

They are not only bound to employ skilful servants, but to have a sufficient number to meet the wants of the

road. In some of the States there are express laws regulating the number of brakemen, &c., to be employed by the company.

Liability for the Acts of their Servants. — It is hardly necessary to state, that they are liable for any accident occasioned by the fault of their servants, or the want of proper servants, or by reason of their not having complied with the statute regulations of their own state.

They are liable for all contracts made by their servants or agents which come within the scope of such agent's authority. Thus, they are liable for the acts and default of the freight or baggage-master in regard to all goods usually carried by them, and for all baggage, which may be placed in his hands, from the time he receives it, until it is properly delivered; and they cannot exonerate themselves from this liability to the owners, by any agreement between themselves and their servants. Neither will the manner in which the servants may be hired, affect their liability in this respect. Thus, if they should agree to pay their baggage-master a certain sum of money per month, and all the compensation received for the carriage of small parcels, they would nevertheless be liable for the loss of any such small parcel, unless the owner knew of this arrangement, and expressly contracted with the baggage-master as principal.

If a private bargain is made with the baggage-master for the carriage of a parcel, and a gratuity is paid him for the carriage, which is not intended by the parties to find its way into the pockets of the company, they will not be liable for its loss. So, if the goods offered are not such as are usually carried by the company, or such as the owner had reason to suppose came within the baggage-master's authority to receive and transport, and he does receive them, the company will not be liable. Thus, if the company never authorized the carriage of bank bills over their road, and never knowingly received freight therefor, they would not be liable for the loss of a package entrusted to the baggage-master

The general rule is, as stated above, that they are not only liable for the unfaithfulness, want of skill, or negligence of their servants, but also for all the acts of their

servants, when those acts come within the scope of their authority.

In Massachusetts, any Engineer, Fireman, or other agent of any Railroad Corporation who is guilty of negligence or carelessness, whereby any injury is done to any person or corporation, is liable to be punished by imprisonment for a term not exceeding twelve months, or by a fine not exceeding $1000.

Every Railroad Corporation is forbidden to run a passenger train, unless there is a trusty and skilful brakeman to every two cars in the train.

Every Railroad Corporation is forbidden to run a freight train, unless the hindmost car of the train is provided with a sufficient brake, and there is permanently stationed on such car, a trusty and skilful brakeman.

In Maine, any Engineer, Fireman, or other agent of any Railroad Company, or any person employed in conducting the trains, by whose negligence or carelessness an injury is done to any person or corporation, is liable to be punished by imprisonment not exceeding one year, or by fine not exceeding $1000.

If the life of any person is lost through ignorance or gross neglect on the part of the Engineer or Conductor, or other person having charge of the engine, or any car or train of cars, the Railroad Proprietors forfeit a sum not exceeding $2000, to be paid to the executor or administrator of the deceased.

In Connecticut, and *New York*, a receipt or check for the baggage must be given to every passenger requiring it, under a penalty of $10.

In New York, every Agent, Engineer, Conductor, or other person in the employ of the Company, through whose wrongful act, neglect, or default the death of a person has been caused, is liable to be punished by imprisonment, in the State prison, not exceeding five years or in the county jail not exceeding one year, or by fine not exceeding $250, or by both fine and imprisonment.

The personal representatives of a person thus killed, may receive such damages, not exceeding $5000, as a jury may think fair and just; the action to be commenced within two years from the accident.

CHAPTER IV.

LIABILITIES OF EXPRESS-MEN.

The *Rights*, and *Duties*, and *Liabilities* of that numerous and important class of Carriers, known as "*Express-men*," do not vary from those of other Common Carriers. These will be here stated, with reference to the pages where the same subject has been more fully treated.

The express-man is bound to receive all goods offered of a similar description to those which he is accustomed to carry, if he has room in his vehicle, and the person offering them is ready and willing to pay the usual or a reasonable freight in advance. He may regulate the place, time, and manner of receiving goods, and is not bound to receive them until he is ready to carry them. But if he receives the goods, he will be liable, although not delivered according to his regulations. (See pages 6, 7.)

The liability of the express-man commences with the delivery of the goods to him. To charge him with a loss, it must be shown that the goods were in his care; it is therefore generally necessary to prove that they were delivered to him or his servant, or that they were delivered in the usual and customary manner. (See pages 10, 11.)

The express-man is bound to carry the goods, with all reasonable expedition, to the place of their destination, and deliver them to the person to whom they are directed. He will be liable for any loss or injury that may happen to them before they are thus delivered, not occasioned by the act of God, or the public enemy, or the fraud of the owner. (See pages 7, 8.)

Reasonable expedition is required in the carriage and delivery of the goods; but the express-man will not be liable for a delay occasioned by any accident or misfortune, which he could not guard against by the exercise of reasonable care and foresight. (See page 11.)

The liability of the express-man does not cease, until the actual delivery of the goods to the person entitled to receive them. The delivery of the goods is as much a part of his duty as the carriage. In the absence, therefore, of any express contract or of any well established

custom regulating the place and manner of delivery, the express-man must make a tender of the goods to the person to whom they are sent; and such tender must be made at a proper time and place. I am not aware of any custom which relieves the express-man from the necessity of making an actual delivery. If the delivery is made to the wrong person, he will be liable. (See pages 11, 12, 13.)

Where the consignee refuses to receive the goods, or is dead, or absent, or cannot be found, the liability of the express-man as a carrier is at an end; but he must nevertheless take reasonable care of the goods. (See page 13.)

The express-man may demand his freight upon tendering the goods, and if it is not paid, he need not give up the goods, but may keep them until it is paid. In such case, he must take reasonable care of the goods. (See page 13.)

Where the express-man receives goods directed to a place beyond the limits of the place to which he is accustomed to carry and deliver, his liability does not terminate upon the delivery of the goods by him, at the termination of his line, to some other carrier to complete the transportation, but continues until the goods are safely delivered at the place of their destination; unless, by express contract or usage, his liability was to cease upon their safe delivery to another carrier. (See pages 13, 14.)

The express-man cannot free himself from his liability to carry and deliver the goods safely, by any notice that the goods are to be at the sole risk of the owner. He may, however, establish regulations requiring the person offering goods to disclose their value, and to pay a corresponding price for their carriage, and he will not be liable, if a person having knowledge of such regulations, fails to comply with them. (See pages 9, 10.)

He is liable for the faults and negligence of his servants, and also for the acts of his servants, where those acts are within the scope of the servant's authority. (See page 14.)

Where several express-men associate themselves together for the purpose of forming a continuous line between distant places, each one of them will be liable with the others for a loss happening on any part of the route. (See page 14.)

CHAPTER V.

LIABILITIES OF OWNERS OF STEAMBOATS.

Liability *of the Owners of Steamboats carrying Freight.* — The owners of steamboats form quite an important class of common carriers. If they employ their boat solely in carrying passengers, then they only incur the liability of passenger carriers; but if, as is ordinarily the case, the steamboat is employed in the carriage, not merely of passengers, but of goods and merchandize on freight, then the owners will incur the liabilities of common carriers as to all such matters within the scope of their employment and business.

The general rules regulating the duties and liabilities of common carriers, as heretofore stated, are applicable to the owners of steamboats, who carry goods and merchandize, as well as passengers; and they are as follows:

They are bound to receive all goods offered for transportation, which are similar to those which they are accustomed to carry; provided the person offering them is ready and willing to pay the freight, and the boat is not full. (See page 6.)

They may regulate the time and manner of receiving goods, but are not bound to receive them until they are ready for their carriage. (See page 6.) Their responsibility begins with the delivery of the goods to them or their agents; and from that time until the goods are delivered at the place of their destination to the proper person, they will be liable for any loss or injury not occasioned by the act of God, or the public enemy, or the fraud of the owner.

Thus, a loss from theft, from the fault or fraud of their servants, or from accidental fire not occasioned by the act of God, &c., must be borne by them. So they are liable for a delivery by them or their servants to a wrong person.

As to the commencement and termination of a carrier's liability, and what amounts to an act of God, or of the public enemy, or the fraud of the owner, see pages 7—11

This responsibility for the safe carriage and delivery of the goods, the law will not allow them to avoid. A notice, therefore, that "All goods or baggage are at the risk of the owner," is of no effect, and their liability remains unchanged. They have a right, however, to inquire into the nature and value of the goods left with them for transportation, and to charge a rate of carriage proportioned to their value. A notice, therefore, to this effect, as a notice, *that they will not be liable for goods or baggage over a certain amount, unless the owner discloses their value and pays an increased rate therefor*, is good, and they will not be liable for goods, if the person delivering them fails to comply with this regulation, *provided* they can prove that he had knowledge of the notice. (See page 9.)

Liability of Steamboat Owners for the Acts and Misconduct of their Servants. — They are liable for any loss or injury caused by the negligence or misconduct of their servants. They are also liable for all acts of their servants, where they come within the scope of the servant's authority. Thus, a delivery of goods to the servant of the owners, is a delivery to them. If, however, the master or baggage-master undertakes the carriage of goods different from those which he is accustomed to carry, without the consent of the owners, he and not they receiving the price for carriage, they would not be liable. (See page 14.) Thus, in one case, where the company had authorized the carriage of goods, wares and merchandize, and the master undertook the carriage of a package of bank bills, he receiving the compensation, and the company having no knowledge thereof, nor never authorizing the same, it was held that the company was not liable for their loss.

Liability for the Baggage of Passengers. — The owners of the steamboat are liable for the safe carriage of the baggage of the passengers, and they will be answerable for any loss or injury not occasioned by the act of God, or of the public enemy, or the fraud of the owner. (See p. 18.) They will be so liable, although no distinct price be paid for the transportation, as the fare paid by the passenger is deemed to include not only his own carriage, but also the carriage of his personal baggage.

Their liability does not commence until the baggage has been actually delivered to their agents. If a person were to take baggage on board with him, and keep it in his own possession, it would be extremely doubtful, whether the proprietors would be liable for its safety; though it is sufficient, if the baggage is delivered in the usual and customary manner. Their liability does not terminate until the baggage is delivered to the right passenger; and he is allowed a reasonable time to demand his baggage. In one case, where it appeared, that though it was usual for passengers, upon the arrival of a line of steamboats at New York, in the night time, to go ashore with their baggage, yet they sometimes remained on board during the night, it was held, that the owners of the boat were liable for baggage left on board through the night, and not called for till the usual hour in the morning. [*See pages* 9 *and* 18.]

The Liability of the Owners of Steamboats as Passenger Carriers. — Steamboat proprietors, as passenger carriers, are bound to receive all persons applying for passage, and willing to pay the regular fare, provided they have accommodations. They may however refuse to receive any person of bad character or habits; or whose object is in any way to interfere with the interests of the boat; or who refuses to observe all reasonable regulations.

Like other passenger carriers, they are not regarded as insurers of personal safety against all contingencies, except those arising from the act of God and the public enemy. For an injury happening to the person of a passenger by mere accident, without any fault on their part, or on the part of their servants, they are not responsible.

But they are bound to the utmost care and diligence in providing for the safety of their passengers. They must furnish staunch and seaworthy boats, fit for the voyage and the season of the year; engines suitable and proper and in good running order; careful engineers of skill and experience; and officers and men sufficient in number and of competent skill and ability to navigate her. They must carry the passengers by the usual and regular route; and must exercise all reasonable care and fore-

sight for their safety during the voyage. In short, they are bound to the utmost care and diligence of very cautious persons; and are responsible for the slightest neglect.

The proprietors, as passenger carriers, have certain rights which they may enforce. They have a right to refuse to carry a passenger, unless he will pay his fare in advance. They have also a lien upon the baggage of a passenger for his fare, but not on his person, or the clothes he has on. They have a right to make and enforce such regulations as are reasonable and necessary for the comfort and convenience of the passengers or for the successful prosecution of the voyage.

ACTS OF CONGRESS FOR THE SAFETY OF PASSENGERS ON BOARD OF STEAMBOATS.

The Act of 1852, 1*st Sec. provides*, That no license, register, or enrolment under the provisions of this, or the Act [Act of 1838], to which this is an amendment, or other papers shall be issued by any collector to any steamboat carrying passengers, until satisfactory evidence is given that all the provisions of this Act have been fully complied with; and if any such vessel shall be navigated, with passengers on board, without complying with the terms of this Act, the owners thereof and the vessel itself shall forfeit $500. — The 2*d Section* directs inspectors to examine and see that suitable precautions are taken to guard against loss or danger by fire.—The 3d *Section provides* for the number of pumps a steamer shall have, the length of hose, &c.—The 4*th Section* makes provisions as to the number of boats, and metallic life boats, their condition, &c.—The 5*th Section provides*, that each steamer shall have a life-preserver or float for each and every passenger, and a certain number of fire-buckets and axes.—The 6*th Section provides* that there shall be convenient access from the lower to the upper deck.—The 7*th Section* relates to the carrying of hemp, gunpowder, oil of turpentine, vitriol, camphene, burning fluid, &c., except by license. The penalty is $100 for violating the provisions of this Section. —The 8*th Section provides*, That gunpowder, oil of turpentine, oil of vitriol, camphene, or other explosive burning fluids, and materials which ignite by friction; when put up for shipment shall be securely packed or put up separately from each other, and from all other articles, and marked with the name of the article. Penalty, $1000 or imprisonment not exceeding 18 months, or both.—The 9*th Section* relates to the appointment, qualifications, and duties of two inspectors, &c.

The 10*th Section provides*, That in those cases where the number of passengers is limited by the inspector's certificate, it

shall not be lawful to take on board of any steamer a greater number of passengers than is certified by the inspectors in the certificate; and the master and owners, or either of them, shall be liable, to any person suing for the same, to forfeit the amount of passage-money and ten dollars for each passenger beyond the number allowed. And moreover, in all cases of an express or implied undertaking to transport passengers, or to supply them with food and lodging, from place to place, and suitable provision is not made of a full and adequate supply of good and wholesome food and water, and of suitable lodging for all such passengers, or where barges, or other craft, impeding the progress, are taken in tow, for a distance exceeding 500 miles, without previous and seasonable notice to such passengers, in all such cases the owners and the vessel shall be liable to refund all the money paid for the passage, and to pay also the damage sustained by such default or delay. Provided, however, that the vessel shall be released in case a satisfactory bond is given to the marshal, for the benefit of the plaintiff.

The 11*th Section* relates to the penalty for obstructing, or loading the safety valve. Penalty $200 and 18 months' imprisonment.—The 12*th Section* relates to the penalty for suffering the water to fall below three inches above the flue. Penalty $100 and imprisonment 6 or 18 months.—The 13*th to the* 17*th Section provide*, That iron boilers be made of stamped plates, and for the qualities of material; penalty for using unstamped plates, $500; and for counterfeiting the marks, $500 and two years' imprisonment.—The 18*th to* 22*nd Section* relate to the appointment of nine inspectors, their duties, pay, expenses, &c.—The 23*d and* 24*th Sections* relate to the duties of Collectors.—The 25*th Section* requires that one copy of the Certificates of Inspectors shall be kept posted up in a conspicuous place in the steamboat, where it will be most likely to be observed by passengers and others, and there kept. The penalty for not having such certificates so posted, and for carrying gunpowder, oil of turpentine, oil of vitriol, camphene, &c., without license, or improperly stowed, is $100.—The 26*th and* 27*th Sections* relate to the penalty on inspector for giving false certificate, and the penalty on master for not conforming to the inspector's certificate in the navigation of his vessel.—The 28*th Section* provides for the stopping of steamers navigating rivers only, when from darkness, fog, or other cause, the pilot on watch, shall be of opinion that the navigation is unsafe, or from accident to, or derangement of, machinery of the boat, the engineer on watch, shall be of opinion that the further navigation of the vessel is unsafe; and the liability of owners for all damage to passengers and their baggage, if no stop is made.—The 29*th Section* provides that the supervising inspectors shall estab-

lish rules for steamers passing each other, to be observed both night and day, two copies of which shall be furnished and kept posted in conspicuous places on such vessels. Penalty for non-compliance, $30—and to all damage done to any passenger.

The 30*th Section provides*, That whenever damage is sustained by any passenger or his baggage, from explosion, fire, collision, or other cause, the master and the owner of such vessel, or either of them, and the vessel, shall be liable to each and every person so injured, to the full amount of damage, if it happens through any neglect to comply with the provisions of law herein prescribed, or through known defects or imperfections of the steaming apparatus, or of the hull; and any person sustaining loss or injury through the carelessness, negligence, or wilful misconduct of an engineer or pilot, or their neglect or refusal to obey the provisions of law herein prescribed as to navigating such steamers, may sue such engineer or pilot, and recover damages for any such injury caused as aforesaid by any such engineer or pilot.

The 31*st to* 34*th Section* relate to fees, &c., of inspectors.—The 35*th Section provides*, That the master of a steamer shall keep a correct list of all passengers received and delivered from day to day, noting the places where received and landed, open to examination of inspectors, &c. — Penalty for neglect $100.

The 36*th Section provides*, That every master or commander of any such steamer shall keep on board of such steamer at least *two copies of this Act*, to be furnished to him by the Secretary of the Treasury; and if the master or commander neglects or refuses so to do, OR SHALL UNREASONABLY REFUSE TO EXHIBIT A COPY OF THE SAME TO ANY PASSENGER WHO SHALL ASK IT, HE SHALL FORFEIT TWENTY DOLLARS.

The 37*th to* 43*d Section* relate to penalties on inspectors, pilots, witnesses;—penalties, how sued for and recovered, &c.

Act of 1838 *provides* for the licensing, or enrolment, of steam vessels; for the inspection of boilers, machinery, hulls, &c.;—that the safety valve be opened when the steamer is stopped for any purpose,—under a penalty of $200.;—that one or more signal lights shall be carried by vessels running between sunset and sunrise,—under a penalty of $200.

Act of 1849 *provides*, That vessels, steamboats and propellers, navigating the Northern and Western Lakes shall, during the night, when on the starboard tack, show a red light; when on the larboard tack, a green light; and when going off large, or before the wind, or at anchor, a white light;—steamboats and propellers shall carry on the stem, or as far forward as possible, a triangular light, at an angle of about sixty degrees with the

horizon, and on the starboard side, a light shaded green, and on the larboard side red, and said lights shall be furnished with reflectors, and of a size to insure a good and sufficient light.

Act of 1843 relates to the additional steering apparatus, of steamboats, to be used in case the pilot is driven from the wheel by fire.

Act of 1825 relates to enrolments, licenses, registers, &c., of steamboats, owned by incorporated companies.

Act of 1812 relates to the enrolment and licensing of steamboats, belonging to Aliens, &c.

CHAPTER VI.

LIABILITIES OF CARRIERS BY SEA.

Carriers by Sea. — The owners and master of any ship or vessel engaged in a general freighting business are liable as common carriers; and it will make no difference whether the vessel is employed in the domestic or foreign trade, or in the coasting, river, or ocean service. It will make no difference in any case, that the cargo was all furnished by one person, provided the vessel was open to all persons indifferently who offered freight for her port of destination. Neither will it make any difference, that the vessel is employed in carrying a particular kind of goods, if she is open to all persons offering goods of that description.

If the vessel is not engaged in the transportation of merchandize for all persons indifferently, but is employed exclusively by one or more persons, then the owners are not liable as common carriers. So, if the owner of a ship, employing her on his own account, should take merchandize on board for freight, from a particular individual, for his special accommodation, he would not be liable as a common carrier. In such cases, the owners and master are liable merely as private carriers to the exercise of reasonable care and diligence for the safety of goods.

The Liability of Carriers by Sea. — Common carriers by sea are liable for all losses not occasioned by the act

of God, the public enemy, or by some excepted perils enumerated in the bill of lading. By the bill of lading the owners and master become bound to deliver the goods at the port of destination, in like good order and condition as when shipped "*danger of the seas only excepted.*"

If no exceptions are made in the bill of lading, the carrier is nevertheless not liable for any loss caused by the act of God, by the public enemy, or by the perils, dangers, and accidents of the seas, rivers, and navigation; but no exception in the bill of lading will exempt him from accidents occasioned by his own negligence and misconduct, or the want of skill or care of the persons whom he has entrusted with the navigation of the vessel.

The phrase "*perils of the sea*" includes such losses only to the goods on board, as are of an extraordinary nature, or arise from some irresistible force, or from some overwhelming power, which cannot be guarded against by the ordinary exertions of skill and prudence. Such are accidents occasioned by the irresistible violence of the winds, and waves, and tides, and currents; by necessary jettison of the goods; by collision where no blame is imputable to either of the vessels; and losses from the irresistible attacks of pirates. For losses not occasioned by the perils of the seas, as losses by embezzlement or theft when not committed by pirates, or by fire, unless occasioned by lightning, &c., the master and owners are liable.

If the loss has been caused by a peril of the seas, yet if, by the exercise of reasonable prudence, skill and foresight, it might have been avoided, the carrier will be liable. In order to determine whether the loss has or has not been occasioned by the negligence or want of care and skill of the servants of the ship-owners entrusted with the navigation of the vessel, the state of the wind, the tide, and the light, the degree of vigilance of the master and crew, and all other circumstances, bearing upon the conduct and management of the vessel, together with the usual and established rules of practice of experienced men under such circumstances, must be considered.

The master and owners generally take care to protect themselves, by the bill of lading, or contract of affreightment, from losses by fire.

Collisions, when the Carrier is or is not Liable for Losses occasioned thereby. — If the collision is accidental, without any blame being imputable to those having charge of the vessel, then the owners will not be liable for any loss occasioned thereby. If, however, there has been any negligence in the management of the vessel, or if the collision has occurred from a failure to observe any well established nautical rule, the owners and master will be liable. (The rules regulating the meeting and passing of vessels may be found on page 85.)

Jettison and General Average. — The master has authority to throw overboard a part of the cargo, for the purpose of saving the ship and the residue of the cargo, in a case of extreme peril. This right can be exercised only in a case of extremity. [*This subject has been fully treated in the Seaman's Assistant — one of this series, which see.*]

Where the goods are thus thrown overboard, the owners of the ship and the residue of the cargo must contribute *pro rata* towards the loss sustained by the owners of such goods for their common benefit; and the master has a right to detain the goods of the shippers until their proper share of contribution is paid or secured. (The whole subject of general average has been fully treated on page 74.)

Commencement of the Liability of the Carrier by Sea and his subsequent Duties.—Reception and Stowage of Cargo. — The liability of the owner and master commences with the delivery of the goods to them. If the goods are delivered in the usual and customary manner, that is a sufficient delivery. Where the vessel is lying at a wharf, it is usual to deliver the goods on the wharf, and notify the proper officer of the fact. Any accident happening to goods thus delivered, in putting them on board will fall upon the carrier.

The manner of taking goods on board, and the commencement of the carrier's liability, depend upon the custom of the particular place. Thus, if goods are to be conveyed to the ship by lighters, and it is the custom or according to the contract, that the master is to take them from the quay or beach, then his liability commences at that place; but if the owners are to deliver the goods at

the ship's side, then his liability commences upon the reception of them, in the same manner as when the ship loads at the wharf.

The cargo must be taken on board with care and skill, be properly stowed and dunnaged; and the goods stowed *under deck;* if they are stowed on deck without the consent of the shipper, or without the sanction of custom, they are at the risk of the ship-owners and master, who will be liable for any loss or injury that may happen to them, from whatever cause, notwithstanding the exception in the bill of lading of the dangers of the seas.

If any injury results from bad stowage, the owners and master will be liable, unless the freighter appointed his own stower, or was informed as to the way in which the goods would be stowed.

Seaworthiness at the Commencement and During the Voyage. — The first duty of the owners and master is to see that the vessel is seaworthy, that is, tight and staunch, and furnished with all tackle and apparel necessary for the intended voyage; and that she is manned by a crew competent, both in numbers and skill, for the voyage, considering its length and the circumstances under which it is undertaken. If the goods are lost by any defect in the vessel, whether latent or visible, known or unknown, the owner is answerable to the freighter.

The vessel must be kept seaworthy during the voyage, if the master can do so by the exercise of reasonable care and diligence. If she meets with an accident, it is the duty of the owner to see that she is put in complete repair at the next convenient port. If he does not, he must abide the loss; for it is of the essence of his contract, that his vessel shall be able to receive, retain, and transport her cargo. *(See Seaman's Assistant, page* 79.*)*

Duty of Carriers to Sail on the Appointed Day. — As soon as everything is in readiness aboard the vessel, the master is in duty bound to set sail; but he ought not to commence his voyage in tempestuous weather. If the owner agrees that the vessel shall sail by a given day, the vessel must sail on that day, unless prevented by necessity; and by necessity is meant, some cause which the owner could not have prevented, such as head winds, bad weather,

&c., &c.; and not a delay occasioned by the default or negligence of the owner. And if the owner of the goods is injured in any way, in consequence of the vessel not sailing at the time appointed, he will be entitled to an action against the owner, unless the vessel was prevented from sailing by necessity.

When a vessel is up for freight, it is customary for the owners to advertise the fact, stating in the advertisement that she will sail on a given day. If, upon faith of such advertisement, a person should send goods on board the vessel, and she should not sail upon the day advertised, and he should be damaged by reason of such delay, the owner of the vessel would, probably, be liable for such damage, unless the vessel was prevented from sailing by necessity. We are not aware that the question has been decided by any court, but have no doubt that it would be so held; especially if the master delayed sailing for a long time after the day named in the advertisement. Of course, if, where vessels are advertised to sail on a given day, it is meant, and so understood by the public, that they will sail, not on that particular day, but *on or about that time*, and they sail within a few days of the appointed time, the owners would probably be deemed to have kept their engagement. But if, in such case, they should delay two or three weeks, and the owner of the goods were injured thereby, the owners of the vessel would doubtless be liable.*

Commencement and Course of the Voyage. — When the voyage is ready, the master is bound to sail as soon as the wind and tide permit; but he ought not to set sail in very tempestuous weather.

The master is bound to proceed to the port of delivery without delay and without any unnecessary deviation

* The above remarks have particular reference to vessels sailing on long voyages, where it would be almost impossible for the owner to know the exact day on which the vessel will sail. A different rule would prevail, we think, in the case of steamboats plying along our coasts, or on our lakes and rivers. If the owner of a steamboat were to advertise her to sail on a particular day, he would be bound, we think, to sail on that day. Certainly he would have no right to delay her sailing for a week or two after the appointed time, for the purpose of procuring more freight; and if he should do so, and any person putting goods on board the boat should suffer loss thereby, the steamboat proprietors would undoubtedly be liable for such loss. In all cases where the owner wishes to have his goods carried on a particular day he had better make a special agreement with the owner of the vessel, that she shall sail on the day advertised, and then she must sail on that day unless prevented by necessity.

from the direct and usual course; and if he is forced by perils out of his regular course, he must regain it with as little delay as possible. If the master deviates unnecessarily from the usual and customary track, and the goods on board are lost or damaged, he and the ship-owners will be responsible, although such loss or injury is not proved to have been caused by the deviation.

Nothing but some just and necessary cause, as to avoid a storm, or pirates, or enemies, or to procure requisite supplies or repairs, or to relieve a ship in distress, will justify a deviation from the regular course of the voyage. A deviation merely for the purpose of saving property is not deemed a necessary deviation.

The Carrier's Duty where the Ship is Stranded, or so Disabled that she cannot Proceed. — The duties of the owners and master, as common carriers, are not varied after the stranding of a ship; but their liabilities continue the same as before. They are bound to show that no human diligence or skill could save the property from being lost by the shipwreck; but that it necessarily perished with the wreck.

If the vessel is so disabled that she cannot be repaired, the master must procure another vessel, if it is in his power to procure a vessel at a port within a reasonable distance, to carry the cargo to its destined port.

If the damaged ship can be repaired within a reasonable time, so as to be able to proceed on her voyage, the master is not bound to procure another vessel, but may retain the cargo until the ship is repaired, and then proceed to complete the carriage of the goods.

Re-shipment, how the Liability of the Carrier is affected by.— The privilege of re-shipping the goods in another vessel is sometimes inserted in the bill of lading; but it does not affect the liability of the carrier for the safety of the cargo during the whole voyage. The privilege of re-shipping is deemed to be for the benefit of the carrier, and his liability does not terminate until the delivery of the goods at the place of their destination.

Delivery of the Goods by the Carrier and Termination of his Risk. — The master must deliver the goods to the persons named in the bill of lading, or their assigns; and for any mistake in this respect, he and the owners are liable.

In the absence of a special contract, or of a well known and long established usage, the mere landing of the goods upon the wharf is not a sufficient delivery to discharge the owners and master from their liability as carriers; but the master must make an actual delivery of the goods at the residence or place of business of the consignee, as the case may be. Such delivery must also be made at seasonable hours; that is, if they are goods to be delivered at the consignee's place of business they must be tendered within business hours. In this respect the duties of carriers by sea and by land are the same. (See page 11.)

In regard to vessels engaged in the foreign trade, it is now well settled, that the contract of the owners and master is merely to carry *from port to port*, and unless it is otherwise agreed, it is a sufficient delivery to land the goods at the usual wharf, and give notice thereof to the consignee; and that after such notice has been given, and a sufficient time has elapsed for the consignee to come and take possession of the goods, the carrier's liability, *as a carrier*, is at an end. But it is the duty of the master to take care of the goods for the owner, unless the consignee is under an obligation to receive them, in which case they will be at his risk.

Goods discharged on any day which custom or law has set apart as a holiday must remain at the risk of the ship until the next business day.

In regard to vessels employed in the coasting and river trade, no such usage, rendering it unnecessary for the master to make an actual delivery of the goods, seems to exist. It has been held, that the liability of the carrier on the Ohio River does not cease by the delivery of the goods on the wharf, and notice given to the consignee. And this would seem to be the law on the Hudson. So there are several cases in the coasting trade, where the master has been held to make an actual delivery of the goods. The master of a vessel employed in the coasting or river trade, if he would release himself from the necessity of making an actual delivery to the consignee, must, therefore, be able to show, that his delivery was in accordance with a usage of that place, so well known and established as to render it probable that the consignee was aware of it.

Where it is customary to deliver the goods upon the wharf, the carrier will not be discharged from liability, until notice has been given to the consignee, and a sufficient time has elapsed for him to come and receive the goods, unless it can be shown to be the well established and uniform usage to land the goods without giving notice.

It sometimes happens, that the consignee refuses to take the goods, or is dead, or absent, or cannot be found; in such case, the master, although his liability as a carrier is at an end, must take reasonable care of the goods, and see that they are properly stored.

The master is not bound to deliver the goods until the freight is paid, as he has a lien upon them for his freight; but he cannot detain the goods on board the ship until the freight is paid, for the merchant ought to have an opportunity to examine the condition of them previous to payment. The master, in retaining goods as security for his freight, is not bound to the strict liability of a carrier for their safety, but is only required to take reasonable care to protect them from loss or injury.

Where a vessel discharges her cargo by means of lighters, and the goods are lost or injured in their passage from the ship to the shore, the loss will fall upon the owner of the goods, if the lighterman is employed and paid by him; but if he is employed and paid by the master or ship-owners, he is then the servant of the latter, and the loss must fall upon them.

Passenger Carriers by Sea. — The owners and master of vessels, who hold themselves out as carriers of passengers, are bound, like other passenger carriers, to receive all persons who apply for passage and are ready and willing to pay their fare. They can refuse only in the cases which have been before stated. (See page 15.)

Every person engaging passage is presumed to contract for all the conveniences and accommodations which are usually furnished on such a voyage.

The owners and master are bound to provide a vessel seaworthy in every respect; to pursue the voyage by the usual and regular route, without unnecessary deviation; to keep the vessel during the voyage, to the extent of his power, seaworthy; and to provide all such accommodations during the passage, as are usual on like voyages.

The master's relation to the passengers is one of peculiar delicacy. His contract with them is not for mere ship room and personal existence on board, but for reasonable food, comforts, necessaries and kindness. In respect to females, it proceeds yet further, and includes an implied stipulation against general obscenity, immodest conduct, and a wanton disregard of their feelings; and any violation of this implied stipulation, in any of its particulars, will be punished, no less than direct personal assaults.

The master may make and enforce such rules and regulations as are reasonable for the convenience of the passengers, or the successful management or safety of the vessel. Thus, if any passenger violates the peace and good order of the ship, the master may restrain him. So, if a cabin passenger should be guilty of gross impropriety and indecency, or should use threats of violence toward the captain, the captain may exclude him from the table.

The master cannot require the passengers to assist in working the ship. In times of danger and peril, however, the authority of the master is very great, and orders requisite for the safety of the vessel, given by him at such times, must be obeyed as well by the passengers as crew.

Like other passenger carriers, the owners and master have a lien upon the baggage of the passenger for his passage money. (See page 19.)

[The laws passed by Congress for the regulation of passenger vessels are to be found in the *Rights of Seamen*, page 94.]

CHAPTER VII.

BAILMENTS.

Bailment, or Bailement, in law, signifies a delivery of goods in trust, on a contract expressed or implied, that the trust shall be faithfully executed on the part of the bailee, and the goods re-delivered as soon as the time or use for which they were bailed shall have elapsed or be performed.

Bailment consists of five species:—

1. *Deposit*, which is a bailment of goods to be kept for the bailer without a recompense. 2. *Mandate*, which is a bailment of goods, without reward, to be carried from place to place, or to have some act performed about them. 3. *Lending for use*, which is a bailment upon a thing for a certain time, to be used by the borrower without paying for it. 4. *Pledging*, which is a bailment of goods by a debtor to his creditor, to be kept till the debt is discharged. 5. *Letting to hire*, which is, 1st. a bailment of a thing to be used by the hirer for a compensation in money; or, 2ndly, a letting out of work and labor to be done, or care and attention to be bestowed by the bailer on the goods bailed, and that for a pecuniary recompense; or, 3dly, of care and pains in carrying the things delivered from one place to another for a stipulated and implied reward.

The responsibility of bailees is governed by the consideration whether, in the case of the thing bailed, they have been guilty of ordinary neglect, gross neglect, or slight neglect. *Ordinary neglect* is the omission of that care which every man of common prudence, and capable of governing a family, takes of his own concerns. *Gross neglect* is that want of care which every man of common sense, how inattentive soever, takes of his own property. *Slight neglect* is the omission of that diligence which every circumspect and thoughtful person uses in securing his own goods and chattels.

The rules and propositions on which the law of bailments depends may, as *Sir William Jones* observes, be considered as axioms flowing from natural reason, good morals, and sound policy; and are as follow:—1. A bailee, who derives no benefit from his undertaking, is responsible only for gross neglect, or, in other words, for a violation of good faith. 2. A bailee, who alone receives benefit from the bailment, is responsible for slight neglect. 3. When the bailment is beneficial to both parties the bailee must answer for ordinary neglect. 4. A special agreement of any bailee to answer for more or less, is in general valid. 5. All bailees are answerable for actual fraud, even though the contrary be stipulated. 6. No bailee shall be charged for a loss by inevitable accident, or irresistible force, except by special agreement.

From these rules the following propositions are evidently deducible:—

1. A depositary is responsible only for gross neglect; or, in other words, for a violation of good faith. 2. A depositary, whose character is known to his depositor, shall not answer for mere neglect, if he take no better care of his own goods, and they also be spoiled or destroyed. 3. A mandatory to carry is responsible only for gross neglect, or a breach of good faith. 4. A mandatory to perform a work is bound to use a degree of diligence adequate to the performance of it. 5. A man cannot be compelled by action to perform his promise of engaging in a deposit or a mandate. 6. A reparation may be obtained by suit for damage occasioned by the nonperformance of a promise to become a depositary or a mandatory. 7. A borrower for use is responsible for slight negligence. 8. A pawnee is answerable for ordinary neglect. 9. The hirer of a thing is answerable for ordinary neglect. 10. A workman for hire must answer for ordinary neglect of the goods bailed, and apply a degree of skill equal to his undertaking. 11. A letter to hire of his care and attention is responsible for ordinary negligence. 12. A private carrier for hire, by land or by water, is answerable for ordinary neglect.

To these rules and propositions there are some exceptions:—1. A man who spontaneously and officiously engages to keep, or to carry, the goods of another, though without reward, must answer for slight neglect. 2. If a man through strong persuasion, and with reluctance, undertake the execution of a mandate, no more can be required of him than a fair exertion of his ability. 3. All bailees become responsible for losses by casualty or violence, after their refusal to return the things bailed, on a lawful demand. 4. A borrower and a hirer are answerable in all events, if they keep the things, borrowed or hired, after the stipulated time, or use them differently from their agreement. 5. A depositary and a pawnee are answerable, in all events, if they use the things deposited or pawned. 6. An innkeeper is responsible for the acts of his domestics, and for thefts, and is bound to take all possible care of the goods of his guests, and is chargeable, although not informed that the goods are in his house. He is regarded as an *insurer*, responsible for

any injury or loss, not caused by the act of God, the common enemy, or the neglect or fault of the owner. When however, a guest has the exclusive keeping and occupancy of a room, the innkeeper is not liable, nor where he takes upon himself the care of the goods, or neglects to use ordinary caution. 7. A common carrier, by land or by water, must indemnify the owner of the goods carried, if he be robbed of them. But it is no exception, but a corollary, from the rules, that "every bailee is responsible for a loss by accident or force, however inevitable or irresistible, if it be occasioned by that degree of negligence for which the nature of his contract makes him generally answerable."

Warehouse-men are bound only to take reasonable and ordinary care of the goods deposited with them. Thus, they would not be liable for thefts, or for loss or injuries caused by rats, unless occasioned by their want of proper care, &c. Their liability commences as soon as the goods arrive, and the crane of the warehouse is applied to hoist them in.

A person may act both as a warehouse-man and as a common carrier, and it is sometimes a question of considerable nicety to decide in which character he is answerable in case of an accident. The general rule would seem to be, that if he receives goods to be carried by him after he shall have received further orders respecting them, and he stores them in his warehouse in the meanwhile, and they are there lost, his liability will be that of a warehouse-man; that is, he will not be liable for the loss, if he has used ordinary care for their safety. But if the goods are placed in his hands as a carrier to be transported by him without further orders, and he places them in his warehouse, as a convenience or security to himself, or at the intermediate station on his route, and they are there lost, his liability will be that of a common carrier.

The warehouse-man must be careful not to deliver to the wrong person, if he does he will be liable.

Wharfingers and Forwarding Merchants are liable to the same extent as warehouse-men.

It is not well settled, whether warehouse-men and wharfingers have a lien upon the goods deposited, for their storage and wharfage, although the better opinion, is that they have.

CHAPTER VIII.

LIABILITY OF CONSIGNOR AND CONSIGNEE.

Liability of Consignor. — The Consignor is responsible by law to the Carrier for his charges in the carriage of the goods, and the Carrier may consequently maintain an action against him for their amount. And it has been held that the usual clause in a bill of lading, engaging the master of the ship to deliver the goods to the consignee, or his assigns, "*he or they paying freight for the said goods*," is introduced for the benefit of the carrier of the goods only, and merely to give him the option, if he thinks, fit, to insist upon his receiving freight abroad before he delivers the goods; and that if he waives the benefit of that provision in his favor, and delivers the goods, without first receiving payment, he may notwithstanding such delivery, recover the amount of his charges from the *consignor*. This is the rule where the goods belong to the consignor, and are shipped on his account. It would seem, however, that if the goods were not owned by the consignor, and were not shipped on his account, and for his benefit, that the carrier, where the bill of lading contained this clause, would not be entitled to call on the consignor for freight. It is better for the master of a vessel, in all such cases, to endeavor to get the freight from the consignee, and thus avoid the possibility of mistake.

Liability of Consignee. — If a person receive goods in pursuance of a bill of lading, in which it is expressed that the goods are to be delivered to him, he paying freight, he, by implication, agrees to pay freight, and may, consequently, be sued therefor, either by the master or shipowner, unless he is a mere agent receiving the goods on behalf of a known principal, and unless the goods have been shipped on board under a charter-party of affreightment, by which the charterer himself has covenanted to pay the freight. A consignee (not the owner) of goods receiving them in pursuance of a bill of lading, whereby

the ship-owner agrees to deliver them to the consignee, by name, he paying freight, is not liable for *general average*, although he has had notice, before he received the goods, that they have become subject to that charge. It would seem that the consignee would be so liable if the consignor had, by the bill of lading, made the payment of general average a condition precedent to the delivery of the goods.

Whether the Consignor or Consignee may sue the Carrier, in Case of a Loss. — It is sometimes difficult to decide, from a bill of lading, whether an action against the master or owners of a ship, for loss or injury occasioned by his or their negligence, should be brought by the consignor or the consignee.

It is a general rule that actions against ship-owners, as carriers, on their implied contract, and actions for the loss or injury of the goods entrusted to them, must be brought by a person who has some property in the goods.

Where goods are sent by a seller to a buyer, the delivery of them to the carrier usually vests the property in the latter, and he is the person to sue the carrier for the loss of them. And if the consignor acted as the agent of the consignee in the purchase of the goods, and delivered them to the carrier, to be conveyed at the risk of the consignee, the action against the carrier for a loss should be brought by the consignee and not by the consignor.

But if by the terms of dealing between the consignor and consignee, the latter is not to acquire a property in the goods, and they are to remain at the risk of the consignor until actual delivery; or if the consignee procured the goods to be consigned to him by fraud, so that no property in them passed to him, the consignor may sue. So, if goods are sent by a carrier merely for approval, the property not passing to the consignee until he receives and adopts the goods, the consignor is the person to bring the action against the carrier.

If the person to whom the delivery is ordered is only an agent of the shipper, and has no property in the goods, it would seem, in such case, that the consignor, and not the consignee, is the proper party to sue.

Cases may occur where the consignor and consignee both may have a property in the goods; as where the

goods are shipped by the consignor to be sold on his own account, and the consignee or agent has made advances on the consignment. In such case, it would seem that they might, either of them, bring an action against the carrier. And though by a delivery to the carrier the property vests in the purchaser, yet, if a special contract has been entered into between the carrier and the consignor, whereby the consignor agrees to pay the carrier for the safe carriage and delivery of the goods, the consignor is entitled, as well as the consignee, to sue the carrier for a loss.

The Extent to which the Bill of Lading is binding upon the Ship-owner and Master.— The bill of lading is the written acknowledgment of the master that he has received the goods from the shipper, to be conveyed on the terms therein expressed to their destination, and there delivered to the parties therein designated; and though it is signed by the master, he does it as agent for the owners, and it is a contract binding upon them. The bill of lading usually contains among other things, the amount and condition of the goods shipped; and a question has been raised, how far the master and ship-owners are bound by these and other statements made therein.

The bill of lading is, in all cases, *prima facie* evidence of the statements therein contained; but as between the consignor or consignee and the ship-owners, it may be controlled by other evidence. Thus, a consignor brought an action against a carrier for the non-delivery of ten barrels of flour. To sustain his case, the consignor put in evidence the bill of lading, signed by the master, in which it was stated that one hundred barrels had been shipped; and he then proved, that only ninety barrels had been delivered by the master to the consignee. The ship-owners, in reply, offered evidence to prove, that the statement in the bill of lading as to the number of barrels shipped was incorrect, and that only ninety barrels had in fact been put on board the ship; and the court permitted them so to do.

So, where a consignee having received the bill of lading, and advanced money upon it, brought an action against the ship-owners for not delivering the full amount of goods stated in the bill of lading to have been shipped

it was held, that the ship-owners might prove, that they never in fact received so many goods as was stated in the bill of lading.

As, however, a bill of lading is usually negotiable, and as its negotiability must depend, in a great measure, upon the confidence which can be placed in the correctness of the statements therein contained, it would seem to be contrary to the policy of the law to permit, either the master or the ship-owners, to deny the truth of those statements, where the bill of lading has been assigned or indorsed over, and the assignee or indorsee has paid a valuable consideration for it. It would seem, therefore, that as against an indorsee for value, the ship-owner cannot dispute or deny what his agent, the master, by his signature has affirmed. The question is, however, still open to discussion.

Where the master had signed a bill of lading, in which it was stated that the freight had been paid by the shippers, though nothing in fact had been received, and the bill of lading was transferred by the consignee for a valuable consideration, it was held, that neither the master, nor the ship-owners could claim freight from the assignee of the bill of lading, but were bound, as against such assignee, by the statement in the bill of lading, that the freight had been paid.

It is obvious that the quality, and frequently also the quantity of the goods, must be unknown to the master, and, in such cases, the master ought to insert words in the bill of lading, denoting that the quality and quantity are only according to the representation of the merchant. And the master should be careful not to sign bills of lading until the goods are actually delivered to him, nor to permit the insertion of statements therein at variance with the facts. By so doing he may bind his owners, and become himself responsible to them and to other parties.

Goods at the risk of the Purchaser while in the hands of the Carrier.—Where goods are sent by a seller to a purchaser, the delivery of them to the carrier usually vests the property in the purchaser, absolutely, from the time of the delivery, and if any loss happens to the goods he, and not the seller must sustain it. If, therefore, the goods never reach the purchaser, but are lost while in

the hands of the carrier, the seller may, nevertheless, sue the purchaser for the price of the goods. And it makes no difference, in such case, that the seller is to pay the carrier for the carriage of the goods.

The seller is bound to follow the directions prescribed by the purchaser in the execution of an order for sending goods, since the latter sustains the risk of their conveyance, but in the absence of any specific directions upon that subject, the seller will be considered as duly performing his part of the contract, if he send them by the usual and accustomed mode of conveyance. Of course, if there is a special agreement that the goods shall be at the risk of the consignor until their delivery to the purchaser, that agreement will be binding.

Stoppage in Transitu.—Where goods have been shipped upon credit, and the consignee has become a bankrupt, or failed, the law, in order to prevent the loss that would happen to the consignor by the delivery of them, allows him, in many cases, to countermand the delivery, and before or at their arrival at the place of destination, to cause them to be delivered to himself or to some other person, for his use. This is technically called, *stoppage in transitu.*

It is necessary, that the consignee should become *bankrupt*, or *insolvent*, for the consignor to exercise this right. If goods are sent by order of the consignee, on his account and at his risk, and the consignor draws bills of exchange on him for the price, and indorses and transmits the bills of lading, the consignor cannot take possession of the goods at the place of destination, and insist upon immediate payment as the condition of delivery, the consignee being willing to accept the bills, and not having failed in his circumstances.

The consignor may exercise this right of resuming possession of the goods in case of the bankruptcy or insolvency of the consignee, at any time before the goods have come into the actual or constructive possession of the consignee; unless the latter has made a valid assignment of the bill of lading for a valuable consideration, in which case the goods belong to such assignee, and the consignor cannot resume possession of them, even if the consignee has become insolvent.

MARINE INSURANCE.

CHAPTER I.

What cannot be Insured: Wages of Seamen cannot be Insured.—Property usually Insured.—A person cannot Insure unless he has an Interest in the Property Insured.—Insurance upon Freight.—Other Insurable Interests.—When Consignee, or Factor, is bound to Insure.—Reinsurance.—Double Insurance.—Open and Valued Policies.

What cannot be Insured.—In time of war no valid Insurance can be effected upon the property of an *enemy*, although such property consists of goods manufactured in this country; neither can a citizen insure goods purchased by him in an enemy's country. Where, by the laws of the land, the traffic in any article is prohibited, no insurance can be effected on such article. The general rule is, that an insurance cannot be made in contravention of the laws of the land. And the insurer may take advantage of this objection, though he knew, at the time the insurance was effected, that the voyage was illegal.

The Wages of Seamen cannot be Insured. This rule, however, does not apply to wages already earned. Neither does it apply to the *captain's wages*, which may be insured, as also his commissions and privileges on board the vessel.

The Property usually Insured.—Insurances are most commonly made on goods and merchandize, freight, bottomry loans, profits and commissions. Every kind of property, in fact, may become the subject of insurance, unless, from motives of public policy, it has been prohibited by law.

A Person cannot insure unless he has an Interest in the Property Insured.—The law is well settled in this country, that if a man insures property in which he has no interest, the insurance is void, although it is expressed in the policy, "interest or no interest." These policies are called wager policies, and are regarded by law as a species of gambling, and are therefore void.

It is not necessary, however, that a person should be the owner of the whole, or a part of the property in order to enable him

to effect an insurance thereon; it is sufficient, if he is directly interested in its safety. A person, therefore, has an insurable interest in any property, when he is so circumstanced with respect to it, that its loss will be prejudicial to him.

Insurance upon Freight.—In order to recover on a freight policy, the insured must establish, either that goods were put on board the vessel, or that there was some contract under which the ship-owners, if the voyage had been consummated, would have been entitled to demand freight.

It is not always necessary, however, that the cargo should be actually on board, in order to enable a ship-owner, upon the loss of the vessel, to recover the insurance of the freight; it is sufficient, if it is so engaged as to give the ship-owner the right to have it.

But it is necessary that the insured should have either already received the goods on board, or sailed in the performance of a contract to carry goods. If, therefore, the owner of a ship, upon the eve of sending her to a foreign port for the purpose of obtaining freight, (no cargo, however, having been contracted for, but the ship being merely a seeking ship,) should procure an insurance on the freight expected to be earned, and the vessel should be lost on her passage out, and before any contract for freight had been entered into,—the owner could not recover such insurance.

And where, on a valued policy, made with reference to the *whole* amount of freight, a complete cargo is not in fact obtained, but the ship is only partly loaded when lost, the insured can only recover for the loss of the freight on the goods actually loaded on board the vessel.

Other Insurable Interests.—The profit expected to arise from a cargo of goods may be insured. Profits ought always to be insured in a *valued* policy, as they are then recoverable in case of a loss of the cargo, without the insured being compelled to show that any profits would have been made if the loss had not happened.

The advances of a consignee, an agent or factor, and the commissions of a master or supercargo, are all subjects of insurance. So, a merchant has an insurable interest in the expected commissions upon goods on shipboard, in the progress of the voyage, which are consigned to him for sale.

Both mortgagor and mortgagee may severally insure their respective interests. And though the property is mortgaged to its full value, yet the mortgagor has an insurable interest in the whole.

The lender upon bottomry and respondentia bonds has an insurable interest for the sum lent. The owner of the ship, in such case, has only an insurable interest in the surplus value above the sum lent.

It is sufficient if the insured has only a special property in the thing insured; as a part owner of a vessel, who has chartered the remainder with a covenant to pay the value in case of a loss, may insure the whole vessel as his property. But a part owner insuring in his own name only, and not mentioning any other person as being interested, can recover only the value of his own interest. The insured usually causes the policy to be made for "himself and whom it may concern," in which case it is for the benefit of any person who has an interest in the property at the time of the insurance, and who *authorized* the insurance to be effected, or *adopted* it when made.

A person who charters a vessel and contracts with the owner to make insurance, has a sufficient insurable interest, as the effect of the contract is the same as an agreement to pay in case of loss. In such case, it is not necessary for the insured to state to the underwriters the particular nature of his interest, unless they question him respecting it. And where it is stipulated by a charter party, that in case the ship be lost during the voyage, the charterer shall pay the owner a sum of money which is estimated as the value of the ship, the owner has still an insurable interest.

When Consignee, or Factor, is bound to Insure.—It seems now to be well established, that consignees for sale, such as commission merchants, &c., may insure both for themselves and for their principal or consignor; and they may insure the goods in their own name or in the name of their principal. If they insure in their own name, and the goods are lost, they may recover the full value of the goods, in which case the surplus, beyond their own interest, would belong to their principal.

Commission merchants are not, however, bound to insure, for the benefit of their principal, goods consigned to them for sale, without some express or implied directions to that effect.

The instances in which an order to insure must be obeyed are, first, where a merchant abroad has effects in the hands of his correspondent here, in which case he has a right to expect that he will obey an order to insure, because he is entitled to call his money out of the other's hands when and in what manner he pleases; secondly, where the merchant abroad has no effects in the hands of his correspondent, yet, if the course of dealing between them be such, that the one has been used to send orders for insurance, and the other to comply with them, the former has a right to expect that his orders for insurance will still be obeyed, unless the latter give him notice to discontinue that course of dealing; thirdly, if the merchant abroad send bills of lading to his correspondent here, he may ingraft on them an order to insure, as the implied condition on which the bills of lading shall be accepted, which the other must obey, if he accept them, for it is one entire transaction.

And if the usage of trade, or the habits of dealing between

them and their principals, require them to insure, they are bound to do so, even if they have received no express directions.

In the above cases the agent or consignee must exercise due diligence and skill in procuring insurance, and must cause the usual and ordinary risks to be inserted in the policy. If in any of these cases he neglects to make insurance, he is himself, by the custom of merchants, to be considered as the insurer, and liable as such in the event of a loss. And, if no available insurance is effected, it is the same as if none at all were made.

It has been held that, although no advantage can be taken of a gratuitous promise to procure insurance, in case of a total neglect to do so; yet, that, if a voluntary agent actually proceeds to make insurance, but through his gross mismanagement the benefit of it is lost, he is answerable for the injury sustained.

Of Reinsurance.—It sometimes happens that the underwriters are desirous to be relieved from their responsibility, and they can do so by reinsuring the same risk. But the reinsurer is only responsible to the original insurer, and not to the original insured. The owner, therefore, can have no remedy against the reinsurer, in case of loss, even though the original insurer become insolvent.

Whatever reasonable and necessary expense the party reinsured has incurred in order to protect himself, and to entitle him to a recovery over against the reinsurers, he may, in addition to the sum he has been compelled to pay the insured, recover from the reinsurers; especially if he had given the reinsurers notice that a suit has been commenced, and that they will be looked to for the costs and expenses, and do not object. An underwriter, in obtaining a policy of reinsurance is bound to communicate, in the same manner as the owner, such information as he possesses in reference to the premises insured, and also to the character of the party insured, and if he does not the policy will be void.

Of Double Insurance.—Double insurance is where the insured makes two insurances on the same risk, and the same interest. It differs from reinsurance in this, that it is made by the *insured*, with a view of receiving a double satisfaction in case of loss; whereas a reinsurance is made by a former insurer, to protect himself from a risk, to which he was liable by the first insurance. A double insurance, though it be made with a view to a double satisfaction in case of loss, and is therefore in the nature of a wager, is not void. The two policies are considered as making but *one insurance.* They are good to the extent of the value of the effects put in risk; but the insured will not be permitted to recover a double satisfaction. He may sue the underwriters on both the policies, but he can only recover the real amount of his loss, to which all the underwriters shall contribute in proportion to their several subscriptions. And, therefore, if he should content himself with suing on only one of the policies, the under

writers on that policy may recover a ratable contribution from the other underwriters. Different persons, however, may insure the same thing upon distinct interests, and each recover the full value of the thing insured The insured may recover the amount insured on all the policies, if it does not exceed the real value of the property insured.

It is usual, in American policies, to insert a clause to the effect, that, in case any prior insurance has been effected on the same property, the underwriters to this policy will be liable only for so much as the amount of such prior insurance may be deficient towards fully covering the property at risk, whether for the whole voyage, or from one port of lading to another. And also another clause to the effect, that, in case any subsequent insurance be effected upon this same property, the underwriters to this policy shall nevertheless be answerable, to the full extent of the sum by them insured, without right to claim contribution from such subsequent insurers. The effect of these clauses is to prevent contribution. And in case of a loss, whether total or partial, it must be borne by the underwriters in the order of time in which they stand; that is, the amount covered by the first nolicy must be exhausted, before a claim can be made on the underwriters to the second, and so on.

Open and valued Policies.—An open Policy of insurance is where the amount of the interest of the insured is not fixed by the policy; but is left to be ascertained by the insured, in case a sloss hall happen.

A Valued Policy is where a value has been set upon the ship or goods insured, and this value inserted in the policy in the nature of liquidated damages, to save the necessity of proving it, in case of a total loss.

Where the insured has an actual interest in the property insured in a valued policy, the value shall not be questioned upon a total loss; unless the valuation *was a mere cover for a wager policy*, or unless it *was so grossly enhanced as to raise a presumption of fraud.*

If goods are *fraudulently* overvalued, in a policy of insurance, with intent to cheat the underwriters, the contract is entirely vitiated, and the insured cannot recover even for the value actually on board. Where, however, a valued policy is, *bona fide*, meant as an *indemnity*, the court will not inquire very minutely whether the valuation be very near the true interest of the insured.

In the case of a *partial* loss it was formerly held, that the valuation in the policy was to be disregarded, and the loss adjusted as in the case of partial loss under an open policy. But the better opinion now is, that the valuation of the property in the policy is to be considered as correct, in the adjustment of partial as well as total losses.

CHAPTER II.

Of Representation.—Of Concealment.—What will be deemed a Material Concealment.—What Things need Not be Disclosed.—Of Warranties: Warranty of the Ship's Safety—Warranty that Ship shall Sail on a given Day—Of Seaworthiness of the Vessel—Commencement and Termination of the Risk: Upon the Ship—Upon Goods—Deviation from the Voyage—What will justly a Deviation from the Voyage: Stress of Weather—Want of necessary Repairs—Succoring Ships in Distress—Sickness of the Captain or Crew—Barratry.

Of Representation.—A representation in insurance is a verbal or written statement, not inserted in the policy, of such facts or circumstances, relative to the proposed adventure, as are necessary to be communicated to the underwriters, to enable them to form a just estimate of the risk. A representation is said to be *material*, when it communicates any fact or circumstance, the belief of which may be reasonably supposed to influence the judgment of the underwriters, in undertaking the risk, or calculating the premium. And whatever may be the form of expression used by the insured or his agent, in making a representation, if it have the effect of imposing upon, or misleading, the underwriter, it will be material, and fatal to the contract. There is a material difference between a representation and a warranty. A warranty being a condition upon which the contract is to take effect, is always a part of the written policy, and must appear on the face of it; whereas a representation is only a matter of collateral information or intelligence, on the subject of the voyage insured, and makes no part of the policy. A warranty must be *strictly and literally* complied with; but it is sufficient if a representation be true in *substance*.

The effect of a misrepresentation in a policy depends on its *materiality to the risk*. If it had no influence, or ought to have had none, of course it could not have been material. A misrepresentation, in a material point, avoids the policy; and it makes no difference, in such case, whether the misrepresentation be made with a fraudulent design, or by mistake, or negligence, as the insurer is thereby led into an error, and induced to take the risk at a smaller premium than he would, had he known the real state of the facts, in which case, perhaps, he would not have assumed the risk at any rate of premium. And such misrepresentation so completely vitiates the policy, that the insured cannot recover upon it, even for a loss arising from a cause unconnected with the facts, or circumstance misrepresented. Whether a misrepresentation be *material* or not, is a fact for the jury to decide. But no representation of a person's *opinion, intention, expectation, or belief*, unless fraudulently made, will avoid a policy.

In such case, the party does not know the real state of the facts, he merely gives his opinion.

Of Concealment.—Concealment consists in the suppression of any fact or circumstance, *material* to the risk; and the effect of it is to avoid the policy; for as the facts upon which the risk must be estimated, generally lie within the knowledge of the insured, or of his agents, the underwriter must, in most cases, rely on him for all necessary information, to enable him to decide upon what terms he will take upon himself the proposed risk; and he computes the premium, and enters into the contract, in the confidence that the insured, being fully informed of all the circumstances relating to the intended voyage, has dealt fairly with him, and has kept back nothing which it might be material for him to know. The concealment, however, to affect the policy, must be *material.* But the effect of a concealment is the same, where it is the result of accident, negligence, inadvertence, or mistake, as if it were intentional and fraudulent, in either case it will be equally fatal to the contract of insurance.

It therefore behoves the insured, from motives of common prudence, to inform himself of every fact and circumstance, which may throw the smallest light on the nature and perils of the proposed adventure: and he is bound by principles of moral honesty, to disclose to the insurer all such circumstances, with the most unreserved candor and frankness. The *underwriter*, as well as the *insured*, is bound to disclose all circumstances within his knowledge, in any degree affecting the risk. If, therefore, it appear that, at the time he underwrote the policy, he knew that the ship had arrived safe, the contract will be void as to him, and an action will lie against him, to recover back the premium.

What will be deemed a Material Concealment.—Every fact and circumstance, which can influence the mind of a prudent and intelligent insurer, in determining whether he will underwrite the policy at all, and at what premium he will underwrite it, is material. And a concealment so vitiates a policy, that the insured will have no remedy, even for a loss arising from a cause unconnected with the fact or circumstance concealed. So, it will make no difference, that the insured considered the facts concealed, as *immaterial;* if they appear to be *material*, and the jury so decide, the policy will be avoided. If however, such material fact was known to the insurer, the mere silence of the insured respecting it will not avoid the policy.

The necessity of disclosing facts material to the risk, is not limited to the owner of the property; but any person acting by the orders of the insured, and who is anywise instrumental in procuring the insurance, is bound to disclose all he knows, to the underwriter, before the policy is effected.

The *time* of a ship's sailing is not, in general, a circumstance necessary to be communicated to the underwriters, except in the case of a missing ship. Where, however, a vessel has been

a long time at sea, it is a fraudulent concealment, if that circumstance be not communicated to the underwriter. And if it appear that the insured did not intend to insure until he believed her to be missing, and then not until another ship, which had sailed at the same time, had arrived in safety, the concealment of this fact is fatal and avoids the policy. So, if a ship be advertised to be in danger, and the insured effects a policy upon goods on board "*ship or ships*," knowing that the ship in danger is one of them, without stating the *ship's name*, this is a concealment which avoids the policy. And, indeed, the question might arise, whether, if the owner of the goods effects a policy "*on the ship or ships*," knowing their names, but not communicating them, this would not be tantamount to a representation that he does not know by what ships the goods will come, and thus avoid the policy. The safer course, at least, in such case, would be to communicate their names, if known, to the underwriter. If a ship is to be employed in a service of peculiar danger, this should be stated to the insurers. So, if the insured receives a letter containing facts, which, if communicated to the underwriter, would lead to inquiry, and produce important information, it ought to be shown by the insured to the underwriter. If, however, the owner of a ship receives a letter from the captain, written on her arrival in a foreign port, giving such an account of her, as to render it probable that she must remain there, for the purpose of being repaired, beyond the time that would be necessary for her to take in her cargo, this letter need not be communicated to the underwriters in effecting a policy of insurance upon her, at and from the foreign port, unless information on the subject be particularly called for. Probably the reason of this is that every ship, upon arriving in port, has to undergo more or less repairs, and this is known to the underwriters.

Many more cases might be cited, but no difficulty will ever arise, if the insured will keep in view the principle of the law. The underwriter on a policy of insurance enters into the contract and computes the premium, in full confidence that the insured, being fully informed of all circumstances relating to the intended voyage, has dealt fairly with him, and has kept back nothing which it might be material for him to know. Every fact and circumstance, therefore, which can possibly influence the mind of the insurer in determining whether he will underwrite the policy, or at what premium, is material to be disclosed, and a concealment thereof will vitiate the policy. Even doubtful rumors, therefore, respecting the safety of the ship, ought to be disclosed And such is the abhorrence in which the law holds fraud, that if the owner hears that the ship is in danger, and does not communicate that fact to the underwriter in effecting a policy, the policy will be void, notwithstanding it afterward appears that the rumor of the ship being in danger was false.

What Things need Not be Disclosed.—The insured need not disclose what the underwriter knows, or ought to know; such as, the difficulties of the voyage, the variation of the seasons, the situation and character of the various ports, the usuage of trade, &c. Neither is it necessary to state general topics of speculation. It is sufficient to communicate *facts*, without stating the apprehensions produced by them. It is also a rule, that it is unnecessary to make any communication or disclosure of that which the insured undertakes, by a warranty, express, or implied. Although there are, therefore, different degrees of seaworthiness, which, if known, may affect the rate of premium, yet it is not necessary that there should be any representation as to the state or condition of the ship, previously to the effecting of the policy; because, in every contract of insurance there is an implied warranty that the ship is seaworthy. So, the insured of goods is not bound to make any representation as to the state of them; though, if a loss happen from the bad condition of them, he cannot recover for that which he has himself occasioned. So, when an insurance is to be made on a homeward voyage, it seems to be sufficient to make a full and true representation of the state the ship was in, at the time the last intelligence left her, without detailing all her previous proceedings. The general rule is, that those things only need be disclosed, which the one privately knows and the other has no reason to suspect, and which vary the risk.

Of Warranties.—Warranties are of two kinds, express and implied. An express warranty must be reduced into writing, and form a part of the policy itself; an implied warranty is that which results, by mere operation of law, from the relative character and situation of the insured and underwriters. A warranty in a policy of insurance is regarded as a condition; that is, a stipulation, upon the strict compliance or non-compliance with which the validity of the policy depends. No *substantial* compliance with the warranty, or performance of any equivalent act, will avail the insured, or render the underwriters liable, if the *express terms* of the contract be infringed. It is immaterial whether the purpose intended by the warranty has been answered or not; whether the loss was attributable to a violation of the warranty, or to any other cause; or whether the breach of the stipulation was occasioned by fraud, or negligence of the insured, or happened entirely without their fault; if the terms of the warranty be broken, the condition of the contract is violated, and the underwriters are consequently discharged. And there is a material distinction, in this respect, between a warranty and a representation; though a warranty must be *strictly* complied with, it is sufficient if a representation be fairly and substantially true.

Warranty of the Ship's Safety.—When a warranty is inserted

that the ship or goods were *safe* on a particular day, the warranty is satisfied if they were in safety *at any time* on that day; and although the policy be subscribed on the same day, and a loss has taken place before the signing, the underwriters will still be liable.

Warranty that Ship shall Sail on a given Day.—The warranty that a ship shall sail on a given day must be strictly performed. Thus, if a ship, warranted to sail on or before a particular day, be prevented from sailing on that day by an embargo, the warranty is not complied with. So, a warranty to sail on or before a particular day is not complied with, if the ship do not completely unmoor on that day, though she then has her cargo and passengers on board, and is ready to sail, and is only prevented from doing so by stress of weather. So, if there be a warranty to sail after a specific day, it is broken, and the policy avoided, by sailing before the day.

The general rule is, that if a ship quits her moorings, and removes, though only to a short distance, being perfectly ready to proceed upon her voyage, and is by some subsequent occurrence detained, that is, nevertheless, a sailing. It is necessary, however, that she should set sail by the appointed time, in a state of preparation and equipment for the voyage; and the warranty is not complied with by the ship's raising her anchor, getting under sail and moving onward, unless these acts are done *as the commencement of the voyage*, and everything is then ready for the prosecution. And if the ship should leave the harbor on the day warranted, without having a sufficient crew on board, although the remainder of the crew are engaged and ready to sail, it is not a sailing within the warranty. And where a ship has left the port, in an *incomplete* state of equipment, intending to stop at some other place to obtain her clearance or necessary papers, to take in water or provisions, to complete her cargo, or any other preliminary purpose, she cannot be considered as having sailed within the warranty.

A warranty "*to sail*," therefore, is complied with, if the ship, being *fully equipped* for the voyage, *break ground, and get under weigh* by the appointed time. But in practice, there is a difference of construction between the words "warranted to *sail*," and the words "warranted to depart," on or before a certain day. A warranty to *depart* requires that the vessel be completely out of the port from which the voyage is to commence, by the time specified. Therefore, where a ship, being insured at and from Memel, and "warranted to *depart* on or before the 15th of September," obtained her clearances, and set sail on her voyage before that day, but was detained within the harbor, by contrary winds, till afterwards, the warranty was not complied with. If the ship had been warranted to *sail* on or before the 15th of September, she would have satisfied the warranty by

the cousre adopted ; but she had not satisfied the warranty "*to depart*," which required that she should *leave* the port of Memel on or before the day mentioned in the warranty.

Of the Seaworthiness of the Vessel.—It is an implied warranty in the case of a policy on ship, goods, or freight, that the ship shall be seaworthy, when she sails on the voyage insured ; that is, that she be tight, staunch, and strong, properly manned, provided with all necessary stores, and in all respects fit for the intended voyage. A ship to be seaworthy, must not only be tight, staunch, and strong, as respects her *hull;* but she must likewise be furnished with all the necessary stores, and with such sails, rigging and tackling, as will enable her, on the one hand, to encounter ordinary perils of the seas, and, on the other, to prosecute her voyage with reasonable expedition.

There are different degrees of seaworthiness, which, if known, may affect the rate of premium. But provided the ship be in a condition to encounter the ordinary perils of the intended voyage, it is necessary to communicate, unsought, a circumstance which, if disclosed, might have the effect of enhancing the premium.

It is not necessary that the ship should, in all cases, be seaworthy from the moment the policy attaches, and the risk commences, but it is sufficient if the ship, at the time the risk commences, be in such a state *as her situation then requires*. If this were not the case, and the owner could never recover on a policy of insurance, unless the ship were seaworthy, at the time of her loss, it must be evident, that an insurance could seldom be effected so as to attach to, and the risk commence running on the ship, while lying in port ; for seaworthiness includes an adequate crew and sufficient provisions, and a proper compliment of these is seldom taken on board, till the ship is on the eve of sailing. The implied warranty of seaworthiness is sufficiently answered, however, if the ship be seaworthy *at the time of sailing*. And by these words "*at and from*," in a policy, the risk attaches while the vessel is in port, though she be not seaworthy, and though, at the time, she be in the dock, undergoing the requisite repairs to render her seaworthy and capable of performing the intended voyage. Thus, the owner of a ship brought an action to recover back the premium paid for a policy of insurance, on the ground, that, as the ship was unseaworthy when she sailed from port, the policy never attached, and consequently the insurance company never incurred any risk under it. Upon examining the policy, it appeared, that the ship was insured "*at and from*" the specified port, and the court thereupon decided, that by the word "*at*" the policy attached while the vessel was in port, notwithstanding she was then unseaworthy ; and that having once attached, and the risk commenced, the premium could not be recovered back, though the policy was subsequently rendered void by the ship's sailing in an unseaworthy condition.

If it be clearly ascertained that the ship, at the time of her departure, was not in a condition to perform the voyage insured, neither the innocence nor ignorance of the insured, nor any precaution he may have taken to make her seaworthy, will avail him against the breach of his implied warranty. Thus, where the owner of a ship, previous to her sailing, caused her to be completely repaired, and it afterwards appeared that she was not seaworthy by reason of a *latent* defect, which could not have been discovered by the most careful examination, it was held that the policy was void.

So, where an insurance is made on her homeward passage, the warranty that she was seaworthy at the time of her departure is as strongly implied in the contract, as in the case of an insurance effected on her outward passage. And though no fraud be imputable to the insured; though he supposed, or believed, that the ship was in all respects seaworthy; though no blame be imputable to the master, or any other agent of the insured; and though the underwriters were as well acquainted with the state and condition of the ship as the owner; yet, if in fact she was not seaworthy at the time of her sailing, the policy of insurance will be void.

There are, however, different degrees of seaworthiness. Thus, a ship may be competent to the performance of one voyage, and yet not of another. So, she may be repaired and equipped in a manner suitable for one season, though not for another. And for the same voyage, to be prosecuted at the same season of the year, different persons may entertain different opinions as to what would constitute seaworthiness. So, the merchants of one country or port, may furnish their ships in a particular manner for a certain voyage, considering it requisite to the safety of their vessels, while the merchants of another country or port would not so consider it, and, consequently, would not so furnish them. Whether or not a vessel were seaworthy at the time she sailed is, therefore, a question for the jury to decide; and in forming an opinion they should take into consideration the nature of the voyage, the season of the year, and the custom of the port to which she belongs, for it is to be presumed that the underwriters had them in view, when they insured the vessel.

Of course, in deciding the question of seaworthiness, the situation of the ship, at the time of her loss, must be considered. Thus. seaworthiness in port, or for temporary purposes, such as mere change of position in the harbor, or proceeding out of port, or lying in the offing, may be one thing; and seaworthiness for the whole voyage quite another. So, what would be a competent crew for the voyage; at what time such crew should be on board; what is proper pilot ground; what is the course and usage of trade in relation to the master and crew being on board, when the ship breaks ground for the voyage, are all questions of fact for the jury, to be decided according to the established usages and customs is such cases, as testified to by experienced men.

But though the vessel be unseaworthy, at the time of sailing, yet if the defect be remedied, with the knowledge and consent of the underwriters, and a loss then happen, not occasioned by such defect, the underwriters are not discharged. But if she sail without a sufficient crew, and go out of her course to complete it, without the consent of the underwriters, they are not liable for a subsequent loss.

A ship to be seaworthy, must have on board a master, officers, and crew competent in point of skill, and sufficient in number to navigate such a vessel upon the voyage she is destined. It is not sufficient that the master is capaple of navigating her ; there must also be on board a mate having sufficient theoretic and practical knowledge of navigation and seamanship to take command in case of necessity, A vessel sailing without such a mate would not, therefore, be deemed seaworthy, at least if she were on a long voyage. And where the master is lost, or becomes incompetent, the mate is not bound to procure a suitable person for master, upon the ship's arrival in a port where such person can be obtained, but may take charge of her himself during the remainder of the voyage, and the insurers will not be discharged thereby.

If the vessel, crew, and equipments be originally sufficient, the insured is not responsible for the subsequent deficiency occasioned by any neglect or misconduct of the master or crew. The owner does not warrant the fidelity of his agents, but merely their capacity and ability. Thus, in case of collision the underwriters are liable, not only where it is the result of accident, but where it has been caused by the fault or negligence of the master and crew. And in such cases, the underwriters are liable, not only for the actual damage done the ship insured, but also for the amount paid the owners of the vessel run into, by way of compromise for the damage sustained by the latter vessel. So, where it appeared, that the captain, during the voyage out, became partially insane and otherwise incompetent to manage the ship ; that the mate neither obtained a person as master, at the next port, nor took charge of the vessel himself, but suffered the captain to continue in authority, and that the ship was lost by reason of his incompetency ; the underwriters refused to pay the insurance, on the grounds, first, that it was the duty of the mate, upon the arrival of the ship in port, to procure a suitable captain ; and, second, that if this were not so, yet he ought to have taken charge of the vessel himself, and his not having done so was a neglect of duty on his part, which freed the insurers from all liability. It was held, that the mate was not bound to procure another master, as the mate of a vessel should himself be competent to take charge of her, in case of the death or incompetency of the captain ; and that, in this case, if from the mate's ignorance of the true state of the captain's situation, or from his reluctance to take the command from him, or from his *neglect of duty*, the vessel was lost, still the underwriters were liable.

If a master should set sail on a voyage with a crew in such a state of intoxication as to render them unfit, at the time, for the proper performance of their duty, and the ship should be damaged or lost thereby, it is extremely doubtful whether the owner could recover her insurance of the underwriters, as the ship could scarcely be deemed seaworthy.

It is sufficient if the ship is seaworthy at her departure, and if she become unseaworthy afterwards and is lost thereby, the insurers will be liable. It must not be understood by this, however, that if the vessel is seaworthy when she sails, the owner is thereby freed from all further liability to keep her in a seaworthy condition, and though she is lost in consequence of his negligence and want of care in this respect, the underwriters are, nevertheless, liable. The owner (and by owner, we include of course the master who is the agent of the owner for the purpose of keeping her properly repaired and equipped during the voyage), is bound to keep her seaworthy during the whole voyage, if he can do so by the exercise of reasonable care and diligence. If the ship sustain an injury in her hull, sails or rigging, or become otherwise disabled, the injury must be repaired as soon as it can be conveniently done. If some of the crew are lost by death, desertion, or otherwise, their places must be supplied as soon as practicable. And if a ship become unseaworthy from any cause, and reaches a port where she can procure supplies or repairs, as the case may be, and leaves the port without obtaining them, and she is afterwards lost by reason of such unseaworthiness, the insurers are not liable. If, however, the ship should become unseaworthy, and the master should not know of it; or, if she receives a blow, and he judges from her subsequent conduct and sailing, that she has suffered no injury thereby, and did not, therefore, have her examined and repaired at the next port he reached, and she should be lost, the underwriters would be liable; though it should appear, that the loss was occasioned by an injury to the hull, which if properly examined while in port, might have been discovered and repaired. So, if the ship become unseaworthy, but is in a quarter of the globe where suitable repairs cannot be made, and she is lost thereby, the underwriters are liable. So, if the ship become unseaworthy, and the owner or master does not exercise reasonable care and diligence to have her repaired, but her loss is not occasioned by her unseaworthiness, but is clearly attributable to some other cause, as to fire, &c., the underwriters are liable. In the case, therefore, where a ship is unseaworthy at her departure, and is lost, the owner cannot recover her insurance, whether he knew of the defect or not, and whether the loss was occasioned by such defect or not. In the case, where she is seaworthy when she sails, but subsequently becomes unseaworthy and is lost, the owner can recover her insurance, unless it appears, that he (or

the master) *knowing* her to be unseaworthy, did not exercise *reasonable* care and diligence to have her repaired, and that she was lost *in consequence of her unseaworthiness*.

Commencement and Termination of the Risk, — Upon the Ship. — The commencement and termination of the risk must depend upon the words of the policy. If an insurance be "*from*" a place, the risk does not commence till her departure from that place, or, in nautical language, till the ship breaks ground. A ship is said to break ground when she weighs her anchor and quits her moorings, in complete readiness for sea, and it is the actual and real intention of the master to proceed on the voyage. And if she is afterwards stopped by head winds and comes to anchor, still intending to proceed as soon as wind and weather will permit, and a loss happens, the underwriters are liable. Where a vessel was insured for one year from the date of the policy, and if the ship should be *at sea* at the expiration of the year, then the policy was to run until her arrival at her destined port; it appeared that a few weeks previous to the expiration of the year, the ship being then in port, and having taken on board her cargo, left her moorings with the intention of proceeding on her voyage, and that she had sailed but a few miles when she was stopped by head winds, obliged to come to anchor, and was detained until a few days after the expiration of the year, when she again set sail and was lost during the voyage. The underwriters refused to pay the insurance on the ground that she was in port at the expiration of the year, but they were compelled to, the court deciding that the vessel having once set sail, with the intention of proceeding on her voyage, she must be considered "*at sea*."

If the insurance be "*at and from*" a place, the risk commences from the time of subscribing the policy, if the ship is *at home*. When, however, a ship, which is expected to arrive at a certain place abroad, is insured "*at and from*" that place, or "*from her arrival*" there the risk begins from the first moment of her *arrival at the place* specified; and the words "*first arrival*" are implied and always understood in policies so worded. It is to be understood, however, that the ship must once have been *at* the place in good safety; otherwise the policy does not attach. Therefore, if she arrive there in such a state as to be unfit to lie in safety, the risk does not attach. Thus, on a policy "*at and from St. Michaels*," it appeared, that the ship arrived there in a very disabled state, and after lying at anchor above twenty-four hours, in great danger from a storm, was blown out to sea and wrecked; it was held, that the policy on the homeward voyage never attached.

The risk on the ship usually terminates after the ship has been moored twenty four hours in safety; but she must have been during that time *in good safety*, in the fullest sense of those

words; for till then, the voyage is not at an end. If, therefore, the ship be obliged to perform quarantine, this does not end the voyage; and, if, before the twenty-four hours are expired, she be ordered to the proper place for that purpose, the risk continues, though she do not leave her moorings till after the twenty-four hours are expired. So, if before the expiration of the twenty-four hours, she should be blown to sea by a storm, the risk would continue. If, however, the ship receives her death wound before her arrival, but succeeds in reaching the port of destination, and remains moored twenty-four hours in safety, the underwriters are discharged. A contrary doctrine, however, prevails in Pennsylvania. And it is held in that state, that where a vessel in the course of the voyage, has suffered damage to the amount of fifty per cent., the insured is entitled to recover for a total loss, notwithstanding she has performed her voyage, and been moored twenty-four hours in safety at the port of destination.

If a ship be insured from the West Indies *to a port of discharge* in the United States, and sails thence for Savannah; but after making some inquiries at that port respecting the state of the markets, and making some repairs, and stopping only a sufficient time for those purposes, but without discharging any part of her cargo, she sails for Boston, it was held, that the risk continued till her arrival at Boston, as Boston was the port *of discharge*, within the policy. Where however, the risk is to run to a country generally, as an insurance on a ship to Jamaica, it is determined by the ship's mooring twenty-four hours in any port there, and does not continue till she comes to the last port of delivery.

In general, the risk on the rigging, tackle, furniture, and provisions of the ship insured, continues no longer than they are attached to, or remain on board, the ship. But where it is necessary to put them on shore during a repair, and this is the usual practice, the risk on them continues; and if they be lost or damaged, by any of the perils mentioned in the policy, the insured is liable.

Upon Goods. — Under the usual form of our policies, the risk does not usually commence until the loading of the goods on board the vessel. And it may be laid down as a general rule, that the risk on goods continues no longer than they are actually on board the ship mentioned in the policy, or in boats for the purpose of being landed, and that if they be removed from on board and landed, or put on board another ship, without the consent of the insurers, the contract is at an end, and the insurers are discharged from all subsequent responsibility. But to this rule there are certain exceptions, founded in necessity. As, where the ship is disabled in the course of the voyage, so as to be incapable of proceeding to her port of destination, and

it becomes necessary to shift the goods insured on board another vessel, in order to be conveyed thither. In this case, the risk continues, and the insurers are liable for any loss, which may happen to the goods on board the new ship. So, if it be agreed that the goods shall be removed into another ship, at a particular place in the voyage, and no ship being there, they are put on board of a store-ship, and lost on board of her, the insurer is answerable. Policies ought to be construed according to the usage of trade. If, therefore, it is customary to unload by means of lighters, the goods are protected, while on board such lighters by the policy. The policy, however, affords protection in the port of delivery, only till the goods can be conveniently landed.

Deviation from the Voyage. — By deviation is here meant a voluntary departure, without necessity or reasonable cause, from the regular and usual course of the voyage insured. From the moment this happens, the voyage is changed, the contract determined, and the insurer discharged from all subsequent responsibility.

The effect of a deviation is not to vitiate or avoid the policy, but only to determine the liability of the underwriters *from the time of the deviation*. If, therefore, a ship, or goods, after the voyage has commenced, receive damage, then the ship deviate, and afterwards a loss happen; then, in such case, though the insurer is discharged from the time of the deviation, and is not answerable for the subsequent loss, yet he is bound to make good the damage sustained *previously* to the deviation. But though he is thus discharged from subsequent responsibility, he is entitled to retain the whole premium.

It makes no difference that the vessel afterwards resumes her proper course, the contract having once been broken by the deviation, cannot be renewed without the consent of both parties. So it is immaterial whether the time or distance of a deviation be long or short; whether it be for an hour or a month, for one mile, or one hundred — the consequence is the same. If it is voluntary, and without necessity, it puts an end to the responsibility of the insurer.

A deviation has been stated to be, a voluntary departure, without necessity, from the usual course of the voyage. By the course of the voyage, is not meant the shortest course the ship can take from her port of departure to her port of destination; but the usual and customary track, if such there be, which long usage has proved to be the safest and most convenient. And if it is customary for vessels in the course of the voyage to stop at certain places, though out of the direct line, it is not a deviation. It must be shown, however, that the custom for vessels to stop at such places, has been long and uniform; and evidence of a few instances is not sufficient to establish such

a custom. Where, therefore, it cannot be proved to have been the regular and uniform practice, it will be considered a deviation, and the insurers will be discharged.

If there are several ports of discharge mentioned in the policy, the ship must not invert the order of them, but must go to them in the order in which they are named, unless some usage, or particular necessity, intervene to vary the general rule. And if the ship's ports of discharge be only mentioned generally, and not specifically named in the policy, the ship must go to them in the *geographical order* in which they occur; and taking them out of the order, unless this be warranted by usage, will be a deviation. The ship may, however, sail for *any one* of the places, as the voyage insured means a voyage to all or *any* of the places named, subject to this restriction, that if the ship should go to more than one of the places, she must visit them in the order in which they stand in the policy. If a ship is compelled by *necessity* to alter the order of the places, it will be no deviation.

Where a policy contains a clause making it lawful for the ship "to touch, stay, trade, &c., at any ports or places whatsoever, without prejudice to this insurance," it is always interpreted as subordinate to the voyage insured, which is the principal object of the contract. It must also be confined to some purpose within the scope of the adventure, and "ports and places" mean those *in the usual course of the voyage*. So, on a policy from and to New York, with leave to call at any of the windward and leeward islands, and load or unload there, it was held that the going to two of them, for a purpose *unconnected* with the voyage, was a deviation, notwithstanding the leave. It is not an implied condition in a policy on ship and freight, that the ship shall not trade in the course of the voyage, if that may be done without *deviation or delay, or otherwise increasing the risk* of the insurers; and, therefore, where a ship was compelled to enter a port to obtain a necessary stock of provisions, which she could not obtain in her usual course, and during her justifiable stay in the port, so entered for that purpose, she took on board bullion there in freight, which the jury found did not occasion any delay in the voyage, it was held not to avoid the policy. So, an idle waste of time, after a vessel has completed the purposes for which she entered a port, is a deviation which discharges the underwriters, for a ship must proceed on her voyage, not only by the usual course, but also with all reasonable expedition.

But an *intention* to deviate, however deliberately formed, is not a deviation. Thus, if the ship sail from the port mentioned in the policy, with an intention to call at a port not mentioned in the policy, and even instructions for that purpose are given to the captain, before the ship's departure, it is not such a

change of the voyage as to prevent the policy from attaching, but is merely a case of deviation, *if the intention be carried into execution*, or be persisted in after the vessel has arrived at the dividing point, that is, where she deviates from the usual course of the voyage insured in order to call at such port. If in such case she be lost before she arrives at the dividing point, the underwriters are liable. And where a vessel sailed with the *intention* to touch at a port not mentioned in the policy, and the vessel did actually go there, the owner was allowed to show that the master was compelled to put in there by necessity, and such being the case, it was held to be no deviation.

If there are several tracks to the place of destination, of which the captain ought to be at liberty to make his election, but the insured prescribed one to him, and the ship having taken that course, is lost, the insurer is discharged.

What will justify a Deviation from the Voyage. — If a deviation can be justified by necessity, it will not avoid the policy. But the necessity, to justify a deviation, must be real, inevitable, and imperious. The duration and extent of the deviation, also, must be warranted by the degree of the necessity; the ship must pursue the voyage of necessity, so as to get to her port of destination in the shortest and most expeditious manner; and any wilful departure from the direct course of this new voyage, or any unnecessary delay therein, will be a new deviation that will discharge the underwriters, in the like manner as if it had been a wilful departure from the original voyage.

Stress of Weather. — If a ship, in a storm, be driven to seek refuge in a port out of the usual course of the voyage, this shall not be deemed a deviation that will determine the contract.

The Want of necessary Repairs. — The want of necessary repairs is another excuse for departing from the direct course of the voyage. If the ship from stress of weather, or any other cause, be reduced to such a state that she cannot safely proceed on her voyage without repairs, the captain will be justified in carrying her to some port, the least out of his course, where such repairs can be had. But if the ship deviate for the purpose of repairs, this, like every other voyage of necessity, must be pursued in the most expeditious manner; and if it appear to have been undertaken for any other object than repair, it will not justify the deviation; or if there be any unnecessary delay in getting the repairs done, this will be equivalent to a new deviation.

Succoring Ships in Distress. — A deviation for the purpose of succoring a ship in distress ought not, it would seem, on grounds of policy, as well as from motives of humanity, to avoid the policy of insurance. A delay, or deviation at sea, however, merely for the purpose of saving a ship, or her cargo, is such a deviation as to discharge the underwriters. If, however, the

deviation be for the purpose of saving the lives of the shipwrecked mariners, it would not avoid the policy. But after this object is effected, if the stoppage be continued, or the risk increased by adding to the cargo, diminishing the crew, or by other means for the purpose of saving the property found, the underwriters will, probably, be discharged.

Sickness of the Captain or Crew. — If by sickness, or any other cause, so many of the officers or ship's company are disabled from performing their duty, as to render it impossible, or highly perilous, to proceed on the voyage, the ship may put into the nearest port where medical assistance, or other hands, can be procured; and the deviation in such case will be justified by the necessity. But, to make out such a justification, it must clearly appear that this necessity arose without any default of the master or owners; and that suitable medicines and instruments were on board.

Generally, putting into port from stress of weather — to stop a leak—obtain provisions, &c,—going out of the track to avoid an enemy — for convoy or other purposes—for the safety of the ship or goods, being beneficial to the insurers, are justifiable.

Barratry. — Barratry is any fraudulent or other unlawful act committed by the master or mariners of a ship, without consent of the owner, and tending to his injury; — as by running away with the ship, wilfully carrying her out of the course of the voyage prescribed by the owners, sinking, or deserting her, embezzling the cargo, smuggling, or any other offence whereby the ship or cargo may be subjected to arrest, detention, loss, or forfeiture. Where a loss is occasioned by the barratrous acts of the master or mariners, the insurers are not liable, unless barratry is specially insured against in the policy. It is usual for the underwriters to insure barratry, and the insured should examine the policy to see that it contains a clause to that effect. If, however, the captain be the insured, no agreement on the part of the insurers can make them liable for barratry committed by himself; but they may be liable in such case for the barratry of the sailors in which he has no part. It is the duty of the owner to prevent, as far as he may, the misconduct of the master; and if the former appear to have acted with gross negligence, the underwriter is not liable.

CHAPTER III.

General Average; Contribution in Cases where the same Person owns the Ship, Cargo, and Freight. — Who must Claim the Contribution — Contributory Value of the Ship, Cargo, and Freight. — The Place of Adjustment. — Of Total Losses and Abandonment. — When an Abandonment is Allowed of the Ship, Goods, and Freight. — Within what time Abandonment must be made. — Notice of Abandonment. — Of Partial Losses and Adjustment of the Ship, Goods, and Freight. — Return of Premium.

General Average. — General average signifies the contribution to which the owners of the ship, goods, and freight, become liable one to another, on the sacrifice of a part of the ship, or cargo, for the preservation of the whole, in a case of general danger. The principles of general average ought to be examined in a work on insurance, because the underwriters are liable to pay the insured the proportion of the contribution, assessed upon the amount insured, in cases where the loss is occasioned by some peril insured against.

To constitute a claim to general average, there must be a voluntary and premeditated sacrifice of part for the preservation of the whole; in which case, all who are benefited by the sacrifice must contribute to the loss, in proportion to their several interests. The ordinary instances of this species of sacrifice are the throwing overboard of part of the cargo, or the ship's stores, the cutting away of the ship's masts, cables, boats or rigging, or other designed and voluntary sacrifice. The sacrifice must be *voluntary*, and made on an occasion of imminent danger. It must not be the result of a panic terror, but an act of prudence to avoid a real danger; it is not indeed necessary, for prudence generally will not permit, that the master, should wait till the very last extremity. The most usual foundation of general average is the case of *jettison*, when goods are thrown overboard to lighten the ship, which may be necessary in a case of storm, or when the vessel is chased by an enemy, or has accidentally run aground, &c. Where jettison is made for the purpose of preventing an approaching danger, and there is time to deliberate whether the jettison ought to be made, in what manner, and of what things, it is best for the captain to take the advice of the other officers and perhaps the crew. Of course, this cannot be done, where the danger is imminent, and requiring immediate action. If the owner of the goods be present and refuse his assent, the master may proceed, in so extreme a case, without his permission. In selecting the articles which should be thrown overboard, those which are the least neccessary, the heaviest, and the least valuable, seem to be properly taken first. But this must be regulated by the prudent choice of the captain.

according to the necessity of the case. The damage done to a ship and cargo in effecting a jettison, in consequence of the necessity of cutting holes in the ship, or opening the hatches to effect a jettison, is said, also, like the jettison, itself to form a subject of average contribution. And not only jettison, but other sacrifices analogous to it, and extraordinary expenses incurred for the general preservation of the ship and cargo, will also lay a foundation for an average claim. Thus, the loss of a cable, cut away by the master in a storm, as the ship was entering a harbor in order to fasten her to the pier and prevent collision with another vessel, was held to be a proper subject of general average. So, when the captain, in a case of collision, was obliged to cut away part of the rigging, and the ship being thereby unable to prosecute the voyage, or even keep at sea, he returned to port to repair the damage sustained; here the freighters were held liable to contribute to the expense of the repairs, and of unloading the ship for the purpose of making them, so far as they were absolutely *necessary* to enable the ship to prosecute the voyage, but no further, as any repairs beyond those *necessary* for the prosecution of the voyage must be for the benefit of the ship-owner, and a charge upon him only. Sails, ropes, and other materials cut up and used at sea for the purpose of stopping a leak occasioned by a storm, or to rig jury masts on a like occasion, or for other extraordinary purposes of a similar nature, which the general safety may require, are considered as proper subjects of general average. In the case of a sale of part of the goods, by the master, in a foreign port, into which the ship was obliged to be brought in distress, for the purpose of defraying the expense of the repair, this appears to be a fit subject of general average; the sale being made in a case of necessity, and the master having no other means of raising money, — although the underwriters on goods are not liable for goods so sold. Among the expenses which, on the occasion of an extraordinary sacrifice, may occur, as raising a claim to average contribution, or pilotage, which may become due on putting into a port of distress; the expense of unloading the cargo, either for the purpose of repairing the ship or of floating her when she accidentally gets aground; the expense of getting the ship off the ground; the hire of extra hands to pump the ship, after having sprung a leak in a storm; the extra charges incurred on putting into a foreign port in distress; the sum awarded or agreed to be paid to ships, boats, pilots, &c., for bringing a ship, when at sea in distress, into port; or for unloading the ship and getting her off the ground when forced on shore. So, if goods be put on board a lighter, to enable the ship to sail over a bar into a harbor, and the lighter perish, the owners of the ship and the remaining cargo are to contribute But if the ship be lost, and the lighter saved, the owners of the goods preserved are not to contribute.

On the other hand, no claim to average contribution can arise; first, where the goods thrown over as a jettison, are goods stowed on deck; and as a general rule underwriters are *not* answerable for property stowed on deck. It would seem, however, that the owner of goods stowed on deck, would be liable to contribute in a case of general average. Or, secondly, when the *whole* adventure was never in jeopardy, and the sacrifice, if it can be so called, was not made for the *general benefit*. Or, thirdly, when the loss or damage was the immediate effect of some peril, or accident, and not a voluntary sacrifice for the general safety; to which class may be referred all loss or damage done to the ship, or goods, by tempest, collision with other ships, enemies, pirates, or other perils, as well as all loss or damage incurred by the ship's tackle, in the course of its application to the purposes for which it is intended; and all those charges and expenses which belong peculiarly to the character of the ship-owner, and ought to fall upon him alone. Thus, where the hausers and towing ropes were broken from the violence of the storm, or in consequence of collision with another vessel, it was held their loss could not be made the subject of contribution; since these ropes were not *sacrificed* by the master, but broken in the course of their application to the ordinary purposes for which they are provided. Nor is the damage done to a ship by standing out to sea with a press of sail, in order to avoid an impending peril of being driven on shore and stranded a subject of general average, even though in consequence of the exertion thus made the ship is much strained, the seams opened, and the ship otherwise much injured. It is only a *common sea risk*, and no injury occasioned by mere sea damage can be the proper subject of general average. Or, fourthly, no claim to general average can arise, unless the sacrifice produced the desired effect of saving the ship and cargo. Thus, in a case of jettison, if the ship be not saved by the jettison, but perish in the storm, no contribution shall be made. But if the ship, being saved by the jettison, be afterwards wrecked in another place, the goods saved from the wreck, shall contribute to the loss of that which was cast overboard in the first peril. It is not, therefore, necessary, in order to found an average claim, that the ship should arrive at the port of destination; it is sufficient if the sacrifice be effectual at the time it is made.

Contribution in Cases where the same Person owns the Ship, Cargo, and Freight. — The rule that all the different subject-matters, or species of property, shall contribute in case of a sacrifice made for the benefit of the whole, is not affected by the fact, that the various species of contributory property are owned by the same person. Thus, if a person were the owner of the ship, cargo, and of course the freight, and he should in-

sure the ship at one office, the cargo at another, and the freight at a third; and a mast should be cut away, or any other injury done to the ship, for the safety both of the ship and cargo, the insurers of the ship would not be obliged to sustain the whole loss, but can call upon the insurers of the freight and cargo to contribute as for a general average. So, if the owner both of the ship and cargo should only insure the ship, and a jettison of a portion of the cargo was made during the voyage for the safety of the ship and cargo, this would be a case for a general average; and the insurer of the ship must pay the owner his average share of the loss on the cargo and *vice versa.*

Who must Claim the Contribution. — In Pennsylvania, it has been decided that the insured, in a case where he has a right to call on other parties for a contribution, cannot recover of the underwriters the whole amount of the loss, until he has first tried to recover the amount of contributions due from other parties. In New York, however, a contrary doctrine has been held, and the insured may, in the first instance, recover of the underwriters the whole amount of the loss, and leave them to compel the other parties to contribute. Perhaps the Pennsylvania doctrine is the best, as in cases of general average, the master and owners of the ship may retain all the goods of the shippers, until their share of the contribution towards the average is either paid or secured.

Contributory Value of the Ship, Cargo, and Freight. — *And,* first, *of the Ship.* — The value at which the ship ought to contribute, is *its worth to the owner at the time it is saved;* for it is in respect of safety that contribution is demanded. The true amount is said to be, that which the hull, masts, yards, sails, rigging, and stores would produce after the sacrifice is made, with the addition of the amount made good by the general average contribution. The seamen's wages are exempt from contribution; and the ship's victuals and ammunition appear to be also excluded.

Of the Cargo. — All merchandize conveyed in the ship for the purpose of traffic contributes, whether belonging to merchants, to passengers, to the owner, or to the master, of whatever kind, and however small be their weight in comparison to their value. For the contribution is made not on account of incumbrance to the ship, but of safety obtained. But ship provisions, the persons of the passengers, wearing apparel, and such jewels as merely belong to the person, do not contribute. The market price of the goods at the place of destination should be adopted as the guide for valuing either the goods remaining, and which are to contribute for the loss, or the goods thrown over for the general safety.

Of Freight. — Freight also forms part of the contributory interest. The contributory value of the freight is the value of

the freight saved, after deducting therefrom the seamen's wages and expenses in an ordinary voyage In Massachusetts, it has long been the practice, in cases of general average, to ascertain the contributory value of the freight by deducting one-third of the gross amount. This rule avoids the embarrassment of nice calculations about small items, which it would in some cases be difficult to make with any exactness.

The Place of Adjustment. — The place at which the average is to be adjusted is, in general, the place of the ship's destination or delivery of her cargo. Convenience appears to require that this rule should be adopted, not only because the master is then better able to ascertain the contributory value of the goods, but because he will then exercise his right of lien, and not part with the possession of the goods, until the sum contributable has been paid, or secured to his satisfaction. But accidents may happen, which may cause a contribution before she reach her destined port. Thus, when a vessel has been obliged to make a jettison, or, by the damages suffered soon after sailing, is obliged to return to her port of discharge, the necessary charges of her repairs, and the replacing the goods thrown overboard, may then be settled by a general average. Of course, in such case, the contributory value of the goods must be ascertained by referring to the value of such goods in that port.

Of Total Losses and Abandonment. — Losses are of two kinds, total and partial. The insured may recover as for a *total loss*, not only when there has been an absolute destruction of the thing insured; but when, by the happening of any of the misfortunes or perils insured against, the voyage is lost, or not worth pursuing, and the projected adventure is frustrated; or when the thing insured is so damaged and spoiled as to be of little or no value to the owner; or when the salvage is very high; or when what is saved is of less value than the freight; or when further expense is necessary, and the insurer will not undertake, at all events, to pay the expense.

But in such cases, where any part of the property remains, the insured, in order to be entitled to a claim upon the insurance company for a total loss, must, in the first place *abandon*, that is, he must renounce and yield up to the insurers all his right, title, and claim to what may be saved, and leave it to them to make the most of it for their own benefit. The insurer then stands in the place of the insured, and becomes legally entitled to all that can be rescued from destruction. The object therefore of an abandonment is to turn that into a total loss, which otherwise would not be; for the very idea of *abandonment* presupposes a *constructive* total loss merely, and implies that something remains which may be saved, and which may be given up, or *abandoned* to the insurers. The principle of law in respect to the necessity of an abandonment, is this, that where the

property, though injured, is not destroyed, and the insured has any legal interest which he can convey, he must abandon in order to be entitled to claim for a total loss. On the other hand, where there is nothing to abandon, as where the property is entirely destroyed, or the owner has been legally divested of the title by a lawful sale, an abandonment would be of no benefit to the underwriters, and is not necessary.

The title may be thus legally divested, in certain cases, by a sale of the property by the master of the ship. It is true that a master of a vessel, as such, has no authority to sell the vessel or the cargo, unless in case of *extreme necessity*, and where he acts with the most perfect good faith, for the interest of those who are concerned in the property. Whether the case is one of extreme necessity, and whether the master has acted in good faith for the interest of all concerned in the property, is a question for a jury to decide. And where, upon an injury happening to the ship, the master, in good faith, calls a survey, and the persons selected to make the survey, are competent in point of skill and wholly disinterested, and they, after a careful and sufficient examination of the vessel, find her materially injured, and come to a fair conclusion that, from the high price of materials, and of labor, or the difficulty of procuring them, the expense of repairing will be more than the worth of the vessel after she is repaired, and therefore they advise, for the interest of all concerned, that the vessel be sold, the captain would seem to be in duty bound to act in accordance with their advice. Even in such a case, however, the question would still have to be submitted to a jury to decide whether, upon all the evidence, giving due weight to the opinion of the surveyors, they are satisfied that the *sale was necessary*.

It is a general rule, that, where the master is in a situation to communicate with the owner or his agent, as in the case of a vessel stranding on a home shore, he is not authorized to sell without consulting the agent or the owners. If, however, there is such an urgent necessity for the sale, as renders every delay highly perilous or ruinous to the interests of all concerned, the master ought not to wait till he can hear from the owner, but should sell her, if he deem it best for the interest of all concerned; and, in such case, it makes no difference, whether the vessel be stranded on the home shore, or on a foreign shore, whether the owner's residence be near or at a distance. Where the property has thus been sold from necessity, of course there is nothing to abandon, and, consequently, there is no necessity of any abandonment. The proceeds of such a sale must be held by the master to the use of the underwriters, it is their property without any abandonment; and if it come to the hands of the insured, it may be deducted from the loss as so much paid.

When an Abandonment is allowed: — *Of the Ship.* — The right of abandonment exists, where the vessel is captured, or the owner is deprived of the free use of the ship, as in the case of detention by embargoes, blockades, and arrests; where the vessel has been wrecked, and where the injury is so great, that the cost of repairs would exceed half the value of the vessel. The right to abandon exists whenever, from the circumstances of the case, the ship, for all the useful purposes of a ship for the voyage, is for the present gone from the control of the owner, and the time when she shall be restored to him in a state to resume the voyage, is uncertain, or unreasonably distant, or the risk and expense are disproportionate to the expected benefit and objects of the voyage.

Shipwreck is generally a total loss. What may be saved of the ship or goods is so uncertain, and depends so much on accident, that the law cannot distinguish this from the absolute destruction of the whole. The *wreck* of the ship may remain, and may be saved, but the *ship* is lost. A thing is said to be destroyed when it is so broken, disjointed, or otherwise injured, that it no longer exists in its original nature and essence. If, however, a shipwreck occurs, without material injury to the vessel, so that she may be repaired in a reasonable time, at a reasonable expense, and resume her voyage, no right of abandonment attaches. Whether the right of abandonment exists or not, is to be judged of from all the circumstances of the case.

So, the mere *stranding* of the ship is not, of itself, deemed a total loss, so as to entitle the insured immediately to abandon. By some fortunate accident, by the exertions of the crew, or by extraneous assistance, the ship may be again floated, and rendered capable of pursuing her voyage. In such case the insurers are only answerable for the expenses occasioned by the stranding; and, as liable for a partial loss, they must pay the insured his reasonable charges for getting the ship off, and for repairing the damages she may have received by the stranding. But, undoubtedly, when by the stranding the voyage is defeated, the owner may abandon. And the stranding of the ship may prove the destruction of the voyage, either by her afterwards becoming a wreck, before she shall be put afloat, or by circumstances accompanying the accident. A ship may be driven on some beach without sustaining essential injury, although she may be bilged; but in good weather may be easily got off, and repaired so as to prosecute her voyage; but if she be wrecked by a subsequent storm, while she remains stranded, the owner may abandon. Or, if the ship be stranded on a part of the coast, where no assistance can be procured to get her afloat, or where there may be no materials or workmen for repairing the damage she may have sustained; the voyage is then lost, and the assured may abandon. Or, if the ship be stranded in

place where assistance, materials and workmen may be easily procured, but it may be doubtful whether the attempt to get her off will succeed, while the expense is certain ; if the insurers, on having notice, will not engage to pay the expenses of the attempt, and also to repair the vessel, if the attempt should succeed, the assured may abandon. So, the *submersion* of a ship may not amount to a total loss ; for she may be in a situation where, by the application of proper means and skill, she may be raised and removed as effectually as if above water. Of course, the rule as to the extent of the injury, or the amount of the damage requisite to justify an abandonment were the vessel afloat, would justify an abandonment in case of submersion. The insurers, to avoid the claim for a total loss, in such case, must make it appear that the ship remains a good and sound vessel, capable, after reasonable repairs, of performing voyages and carrying cargoes ; but whether she is so or not, does not depend upon the single circumstance of submersion.

But though the injured ship may be in a situation, where repairs can be easily made, yet it is well settled in this country, that if the cost of repairs will exceed *one-half* the value of the vessel, then the owner may abandon to the underwriters. In ascertaining whether the vessel could have been repaired for less than one-half of her value, the Massachusetts and New York rule is, that the valuation of the vessel as fixed by the parties in the policy, is to be taken as her true value, and the parties will not be permitted to show what is her *real* value. A contrary doctrine has, however, been held by the Supreme Court of the United States ; and it has been decided by that court that, in respect to the mode of ascertaining the value of the ship, and, of course, whether she is injured to the amount of half her value, the true basis of the valuation is the value of the ship at the time of the disaster ; and that if, after the damage is or might be repaired, the ship is not, or would not be worth, *at the place* of the repairs, double the cost of the repairs, it is to be treated as a technical total loss ; and that, consequently, the valuation of the vessel in the policy, or the value at the home port, or in the general market of other ports, constitutes no ingredient in ascertaining whether the injury by the disaster is more than one-half the value of the vessel or not. It was also held, that the ordinary deduction in cases of a partial loss of *one-third* new for old, from the repairs, is inapplicable to cases of a technical total loss, by an injury exceeding one-half of the value of the vessel.

By the well settled principles of law, the state of *facts* and not the state of the *information* at the time of the abandonment, constitutes the true criterion by which we are to ascertain whether a total loss has occurred or not, for which an abandonment can be made. If the abandonment, when made, is good,

the rights of the parties are definitely fixed, and do not become changed by any subsequent events. If, on the other hand, the abandonment, when made, is not good, subsequent circumstances will not affect it, so as, retroactively, to impart to it a validity which it had not at its origin.

Although the right of the insured to abandon in case of an injury or damage to the vessel, must depend upon the fact of such injury or damage existing at the time of the abandonment, yet it is necessarily open to proofs, to be derived from subsequent events. Thus, for example, if the repairs, when subsequently made, clearly exceed the half value, it is plain that this affords one of the best proofs of the actual damage or injury. On the other hand, if the subsequent repairs are far below the half value, this, so far as it goes, affords an inference the other way. But it is not always sufficient, in order to avoid the right of the insured to abandon, to show that the injury to the vessel was actually repaired for a sum less than one-half her value. In many cases of stranding, the state of the vessel at the time may be such, from the imminency of the peril, and the apparent extent of expenditures required to deliver her from it, as to justify an abandonment; although, by some fortunate occurrence, she may be delivered from her peril, without an actual expenditure of one-half of her value after she is in safety. Under such circumstances, if, in all human probability, the expenditures which must be incurred to deliver her from her peril are, at the time, so far as any reasonable calculations can be made, in the highest degree of probability beyond half her value, and if the distress and peril are such as would induce a considerate owner, uninsured, and upon the spot, to withhold any attempt to get the vessel off, because of such apparently great expenditures, the abandonment would doubtless be good.

In Massachusetts it has been held, that, where the insured refuses to repair the vessel, but abandons her and claims the right to recover as for a total loss, the underwriters having refused to accept the abandonment, may take the vessel into their possession and repair her; and if the expense of the repairs does not exceed half her value, they may restore her to the insured without his consent, and thus avoid paying for a total loss. In such case, however, the underwriters must repair and restore her to the insured within *a reasonable time*, otherwise the abandonment will be good. A contrary doctrine was held by Judge Story, who decided that as the insured, after having elected to abandon the vessel and go for a total loss, could not then go on and repair her without, by so doing, waiving his abandonment; so, if the underwriters after having refused to accept the abandonment, should take her into their possession for the purpose of repairing her, they would by that act be deemed to have accepted the abandonment notwith-

standing their refusal so to do, and be obliged to pay as for a total loss. By this decision it would seem that, where the insured has abandoned, and the underwriters have refused to accept it, both parties, in order to preserve their rights, must lie by and wait till the question, as to the right of abandonment under the circumstances, be judicially determined.

The law gives to the insured and not to the underwriters, the option to abandon or not. The insured is in no case bound to abandon. He may in all cases, elect to repair the damage at the expense of the underwriters; and if he acts *bona fide* and with reasonable discretion, it seems he would be entitled to recover a full compensation, however great it may be, even if it should equal, or exceed, the original value of the ship.

Of Goods. — Where the goods insured are damaged to an extent exceeding one-half their value, by any peril insured against, the insured may abandon, and recover as for a total loss. The cargo may be abandoned, and the insured recover, as for a total loss, not only where it has been completely destroyed, or damaged to an extent exceeding one-half its value, but also where the carrying ship receives a permanent injury during the voyage, and is thereby prevented from conveying the goods to the port of destination, and there is no other means of conveyance. The mere fact, however, that the carrying ship is destroyed or disabled from proceeding on her voyage, is not sufficient to warrant an abandonment of the cargo; for if the cargo be not damaged to an extent exceeding one-half of the invoice value, it is the duty of the master, upon the ship's becoming disabled, to procure another vessel, if it is in his power, to carry on the cargo to its destined port. The general rule, as to the amount of diligence the master is bound to exercise, in procuring another vessel to complete the carriage of the goods, is that, if he can procure another vessel at the port of distress, or at a port immediately contiguous thereto, he is bound to do it; but if no vessel can be procured either at the port of distress or one near at hand, the insured may abandon, and recover for a total loss. But this rule, it would seem, must be taken with reasonable qualifications. The master, undoubtedly, ought to follow it, in cases of difficulty and doubt; as where he would be obliged to send the cargo, not to a contiguous port, but to a distant place, for re-shipment, or where the transportation would be difficult and hazardous. The object of the rule was to furnish a guide to the master, in cases where, but for some such rule, it would be difficult for him to know how to act. But where it is reasonable that the master, taking into view the nature of the voyage, and the time, expense, and risk of transportation to the port of destination, should procure another vessel to send on the cargo, and a vessel can be procured at a port within a reasonable distance, though it is not geographically *contiguous* to the port of distress, he is bound to do it.

And it seems he would be bound to do it, even though it should be necessary to make use of land carriage in order to re-ship the goods. It may happen that the transportation by land to a convenient port, might be more safe and expedient, than a transportation for a less distance to an open roadstead, for the purpose of re-shipping the goods, — the roads and conveniences for land conveyance might be good, while it might be difficult and hazardous to transport the goods from the shore to a ship beating in open sea, — in such case, the former rather than the latter mode of re-shipment should be adopted, even though it should become necessary thereby to carry the goods to a port not the nearest to the port of distress. The goods may therefore be abandoned by the owner, in all cases, where they have been damaged, by one of the perils insured against, to an extent exceeding one-half their invoice value ; or where the carrying ship, having become permanently disabled, so that she cannot proceed to the port of destination, the expense of procuring some other means of conveyance would exceed the value of the goods, — or, the ship being thus disabled, no vessel can be procured, either at the port of distress, or at one within a reasonable distance ; or, where the vessel, though damaged, may be repaired, yet the cargo, being of a perishable nature, will be irretrievably destroyed by the delay to repair. The mere retardation of the voyage by a peril insured against, if the vessel can be repaired in a reasonable time, unless the cargo be of a perishable nature, does not amount to a total loss of the cargo, so that the owner may abandon. The underwriters do not warrant the *time* of the voyage, but simply that the cargo shall be capable of arriving at the port of destination, notwithstanding any of the perils insured against.

Of Freight. — Of course, if the cargo is lost, or if the ship is lost or permanently disabled during the voyage, and the cargo is thereby lost, or no vessel can be obtained to complete the transportation of it to the port of destination, no freight can be claimed of the owners of the cargo, and the insured may recover of the underwriters the insurance on the freight. So, we have seen that, if a ship sail in performance of a contract of affreightment, though no goods be actually on board, and she is lost, the owner may recover the amount of freight insured. (See page 55.) But a total loss of the ship is not always followed by a total loss of the freight. The master, as we have seen, is in duty bound, if it is in his power, where the ship is lost, or becomes permanently disabled during the voyage, and the cargo remains, to procure another ship to complete the transportation of the goods. (See page 83.) If the master succeeds in procuring another vessel, and the cargo is thus conveyed to the port of destination, the freight is earned, and the insured has lost only a portion of the frieght, — the amount

paid the other vessel, or a proportional part of the freight, according to the part of the voyage not performed. If in such case, the expense of sending on the cargo by another vessel will exceed *one-half of the freight*, it is a technical total loss of the freight, which will authorize the insured to abandon and recover as for a total loss; he thus throws the risk and expense of collection, and other incidental expenses, upon the underwriters, and recovers the whole amount insured without delay.

If the cargo is carried to the port of destination, *and specifically remains*, though by reason of sea-damage it is utterly ruined and worthless, yet the owner of the ship is entitled to the full freight for the voyage, and therefore there being no loss of freight, the underwriters are not liable. And if the ship, being damaged so as to be obliged to put into an intermediate port for repairs, can be repaired within a reasonable time, so as to be able to proceed on her voyage, the master has a right to retain the cargo until the ship is repaired, and he is thereby enabled to complete the transportation of it, and by so doing he is entitled to *full freight*. And, in such case, the owner of goods cannot claim them at such intermediate port, without paying *full freight*, even though the cargo is so damaged that, if carried on in such a state to the port of destination, it will be utterly ruined; or, if by reason of the delay necessary to complete the repairs, the cargo, being of a perishable nature, would be utterly spoilt and worthless by the time it reached the destined port. — Nor will it make any difference in this respect, that by such detention and retardation of the voyage, the arrival of the cargo at the place of destination will be so late as to disappoint the purposes of the shippers, by the change of the season, loss of markets, or otherwise. If, therefore, in such cases, the master voluntarily relinquishes his right thus to retain the cargo and complete its transportation, by giving it up to the shippers or their agent at such intermediate port, he loses the right of earning the freight on that particular cargo, by such voluntary act, and not by one of the perils insured against, and therefore the underwriters on freight are not answerable.

Where, however, the master is thus obliged to put into some intermediate port, for the purpose of making necessary repairs, he is to be considered not only as the agent of the ship-owners, but also as the agent of all concerned, and especially of the owner of the cargo. If, therefore, the cargo in such case is of a perishable nature, or is so damaged, that to proceed with it in its present state will endanger the ship and the cargo, and it will become utterly worthless on its arrival at the port of destination, it is the duty of the master to sell the same at such intermediate port. The owner of the ship would nevertheless be entitled to full freight, and consequently would have no claim upon the underwriters.

Within what time Abandonment must be made. — Where the insured receives intelligence of such a loss as entitles him to abandon, he must give the underwriters notice in a reasonable time; otherwise they waive their right to abandon, and can only recover for a partial loss. When it is said that the insured must abandon in the first instance, it is meant that he must abandon immediately after he has had a convenient opportunity of examining into the circumstances, which render abandonment expedient or otherwise; because it is on the result of such an examination, that he is to make up his mind, whether he will abandon or not. It must not be understood, however, that the insured may delay making an abandonment for the purpose of ascertaining the state of the market, and as the market falls or rises, elect whether he will abandon or not. Any such delay would amount to a waiver of his right to abandon. The only delay that can be made, if it can be called a delay, is for ascertaining the nature and extent of the injury, and whether it is sufficient to warrant an abandonment, without reference to the state of the market.

The insured have, in different cases, been held to have waived their right to abandon by a delay of forty-five, thirty, nine, or even five days; where no reason could be given for the delay.

An *underwriter* who rejects an abandonment must also do so in a *reasonable* time.

Mode of Abandonment. — When an abandonment is made, it must apply to the whole subject of insurance; the insured cannot make an abandonment of part; it must apply to the whole of an entire subject of insurance, or it will be no abandonment. On a loss taking place, the insured cannot abandon part of what is saved out of one *entire subject* of insurance, and retain the other part Neither can an abandonment be made subject to certain conditions specified by the insured, unless indeed the underwriters accede to those conditions, and by their assent in effect enter into a new agreement with the insured. With respect to the precise form of an abandonment no particular one is required, it is sufficient if it be *express and positive.* It is not necessary even, that it should be in writing, though it is perhaps better to do so, and to use the word "*abandon.*"

Notice of Abandonment. — Notice of abandonment may be given by, or to the parties to the contract, or agents in their behalf. When several persons are jointly interested in a cargo, and some of them cause a policy to be effected on the behalf of themselves and others, it seems that those who cause it to be effected are to be considered agents for the rest, and therefore competent to give notice of abandonment. The notice of abandonment may be given to the underwriters, or their authorized agents.

Of Partial Losses and Adjustment. — Of course, wherever the property insured is injured by any of the perils insured against, the owner may recover the amount of the loss from the insurers. It is only necessary to show how such loss is adjusted.

Of Ship. — When a ship partially damaged has been repaired by the owners, the practice is to deduct one-third from the cost of the repairs, in consideration of the benefit which the owners derive from new materials in lieu of the old. This rule is intended to prevent nice calculations as to the amount of damages; and is adopted on account of the impossibility, in most cases, of proving the actual deterioration of the vessel by the wear and tear of the voyage. It makes no difference if the vessel be new, it being her first voyage; the same rule of one-third deduction, new for old, applies.

Of Goods. — The value of the goods is to be estimated according to the invoice price, or the valuation in the policy; and the insurer is not liable for the rise and fall of the market, or for a loss that may arise from the difference of exchange. Insurance is a contract of indemnity against the perils of the voyage; the insurer engages, so far as the amount of the prime cost, or value in the policy, "that the thing shall come safe;" he has nothing to do with the market; he has no concern in any profit or loss, which may arise to the merchant from the goods; if they be totally lost, he must pay the prime cost, that is, the value of the thing insured at the outset; he has no concern in any subsequent value. So, likewise, if part of the cargo, capable of a several and distinct valuation at the outset, be totally lost; as if there be one hundred hogsheads of sugar, and ten happen to be lost, the insurer must pay the prime cost of those ten hogsheads, without any regard to the price for which the other ninety may be sold. Where an entire thing has been partially injured, as, if one hogshead of sugar were partially damaged, the following is the rule for calculating such a partial loss. Suppose the damaged article sells at the port of delivery for ten dollars, and the same article, perfectly good and sound, would have sold for twenty; here the article has been damaged one half of its value; the loss then is one half the prime cost, (usually the invoice price,) and the underwriters are liable to that extent, &c.

Of Freight. — Where the ship, by reason of any of the perils insured against, is permanently injured during the voyage, so that she cannot proceed, and the master is obliged to hire another vessel to complete the conveyance of the cargo, here of course, has been a partial loss of freight, for which the underwriters are liable. So, if a part of the cargo be lost, and the ship is thereby prevented from earning her full freight, the underwriters are liable for the deficiency. The subject has been, however, already fully treated. (See pages 84, 85.)

Return of Premium. — A return of premium may become due, either by express stipulation, or by tacit operation of law and the usage of merchants. By express stipulation, as where a clause is inserted in the policy to return a certain per centage if the ship sail with convoy and arrive, — if she sail by a certain time, — or discharge at a certain place, and arrive in safety, &c. By tacit operation of law and the usage of merchants; as in the case of the risk not being run, or the policy becoming void. And where the risk has not been run, whether its not being run was owing to the fault, pleasure, or will of the insured, or to any other cause, the premium shall be returned; because a policy of insurance is a contract of indemnity. The underwriter receives a premium for the risk to be incurred, and if he does not run the risk the consideration for the premium fails, and therefore he ought to return it.

The most simple case of a return of premium is from the failure of the interest. When a policy is made on goods, and no goods are put on board the ship, the insured may recover back the premium; for as the risk contemplated by the parties was not incurred, the consideration of the contract fails. The return of premium for *short interest*, or over insurance in the case of a valued or open policy, rests upon the same foundation. This occurs where a part only of the goods embraced in the policy is put on board; a corresponding portion of the premium must then be returned. But in the case of a valued policy, if all the goods to which it was intended to apply, though not being of the value, were put on board, there can be no return of premium for short interest, because the entire risk attached.

When the risk embraced by the policy is entire, and has once *commenced*, there can be no return of the premium, or any part of it. This rule applies, whether the policy is effected for a certain period of time, or upon a certain voyage. Thus, where the insurance is for twelve months, at a certain rate per month; and the risk ceases at the end of two months, there can be no apportionment or return of premium. Thus, we have seen, that a policy of insurance effected on a vessel "*at and from*" a certain port, attaches and *commences* running while the vessel lies in that port; and that the risk having thus commenced running, the insured cannot recover back the premium, though the policy was subsequently rendered void by the ship's sailing in an unseaworthy condition. (See page 64.)

CHAPTER IV.

INLAND INSURANCE, AND COLLISIONS.

Inland Insurance. — By this term is meant, the insurance of vessels of every description, at risk on our rivers and inland waters. The principles of law applicable to it, are the same as those which govern *Marine Insurance*. It makes no difference, whether the property insured is a steamboat or a sailing vessel, as it has been decided that the laws of marine insurance govern and regulate the insurance of steamboats as well as of sailing-vessels,—of vessels employed on our inland waters as well as of those engaged in foreign trade. Persons, therefore, procuring insurance upon any species of property, at risk on our rivers and lakes, must refer to the subject of marine insurance in order to ascertain their rights and duties. There are, however, a few cases of inland insurance, which it may be useful to state, and which will, therefore, be inserted in this chapter.

By a decision in Tennessee, it seems that it is not customary to lash flat boats, descending the Mississippi, laden with produce, to a steamboat to be towed, and that it is a violation of the contract of insurance to do so.

An action was brought to recover the insurance effected on some tobacco, shipped on board a flat-boat in Smiths County to be conveyed to New Orleans. At the trial, it appeared that the boat, being run into, during her passage, by a steamboat, put into Vicksburg; and that while there the master caused her to be examined, and thinking that she might be towed with safety to New Orleans, procured a steamboat for that purpose. On the passage to this latter city the flat-boat was lost. It was held to be a deviation to lash a flat-boat to a steamboat to be towed, and the insurers were therefore discharged. The Court said that, if, after the occurrence of the accident, it had been deemed necessary to tow the boat to the first convenient landing, or port, for the purpose of reparation, or reshipment, it would have been very proper, and would not have amounted to a deviation. But that, in this case, the flat-boat having, after the accident, sailed into Vicksburg, the master, if the boat was unable to proceed on her voyage, ought to have repaired her, or else procured some other vessel to complete the carriage of the cargo; and that his procuring a steamboat to tow his vessel to New Orleans was such a violation of the contract of insurance, as to discharge the insurers from their liability thereunder.

It is a deviation for steamboats, while on their passage, to take vessels in tow, unless authorized in the policy of insurance, or by a long established usage, so general, and so well known,

that it is fair to presume the parties contracted in reference to it; and if they do so, the insurers will be thereby discharged.

An insurance was effected on the steamboat Fort Adams, against the adventures and perils of the river, of fire, and all other perils, losses and misfortunes, that might happen in the navigation from port to port. The steamboat, while on her passage to New Orleans, loaded with cotton, took in tow a brig, and was afterwards lost. It was held, that taking the brig in tow amounted to a deviation, and that the insurers were thereby discharged. For the same reason, the insurers were not held liable under a policy of insurance effected on the cargo.

The loss of a steamboat, occasioned by the explosion of her boiler, is covered by a policy containing the usual marine risks. A policy on ships covers losses arising from accidents to the power which moves them, and, it must be presumed, that the parties contemplated the same protection to a steamboat, when the loss occurs to her machinery.

In Ohio it has been decided, that the insurers are not liable for the expense of delay, wages, and provisions of the crew of a steamboat, while detained for repairs, though the crew are employed in making the necessary repairs.

An insurance of the body, machinery, tackle, and furniture of a steamboat, covers the costs of repairing any injury to either within the policy, and the expense of towing her to the nearest port for repairs.

Where fire is one of the enumerated risks in a policy on a steamboat, a loss by fire will charge the underwriters, though occasioned by the negligence of the officers or crew.

So, where a steamboat was lost by the explosion of the boiler, arising from the negligence of the master, and other agents of the insured, it was held that the insurers were liable.

A distinction must, however, be taken, between losses which arise from a want of capacity and skill in the officers, and those which are the result of mere negligence. For losses occasioned by the former cause, the insurers are never liable.

The insurers would not be liable for a loss occasioned by the negligence of the master or crew, where such negligence was so gross as to raise the presumption of fraud, which would amount to barratry, unless the policy expressly insures against barratry.

COLLISIONS.

Collisions of Ships. — A learned judge has said, that there are four possibilities under which an accident of this sort may occur. In the first place, it may happen without blame being imputable to either party; as where the loss is occasioned by a storm, or any other *vis major*. In that case, the misfortune must be borne by the party on whom it happens to light; the other not being responsible to him in any degree. Secondly, a misfortune

of this kind may arise where both parties are to blame; where there has been a want of due diligence or of skill on both sides. In such case, the rule of law is, that the loss may be apportioned between them, as having been occasioned by the fault of both of them. Thirdly, it may happen by the misconduct of the suffering party, and then the rule is, that the sufferer must bear his own burden. Lastly, it may have been the fault of the ship which ran the other down; and in this case, the injured party would be entitled to an entire compensation from the other.

There are certain nautical rules by which, in most cases, the question of negligence is decided. Thus, if a vessel is going close-hauled to the wind, and another meeting her is going free, the rule of the sea is for the latter vessel to go to the leeward; and although such vessel may either go to the leeward or windward, as she best can, yet she ought, as a general rule, to suppose that the vessel going to the windward will keep her position. If two vessels are beating to windward on opposite tacks, it is the duty of the vessel on the starboard tack to continue her course, and that on the larboard to give way; and when both vessels have the wind large, or abeam, and meet, they should pass each other on the larboard hand, to effect which the helm must be put to port.

These rules do not apply where one of the vessels is a steamboat; for steamboats, from their greater power, ought always to give way. A steamboat is considered as always sailing with a fair wind, and is therefore bound to do whatever a sailing vessel, going free, (or with a fair wind) would be required to do, under similar circumstances, in relation to any vessel she may meet. A steamer which, going in a fog with unabated speed, in a track frequented by coasters did not, when hailed, order her engines to be stopped, and a collision ensued, was held liable to the amount of damage and cost. In England, a rule is established, that when steamboats on different courses must unavoidably or necessarily cross so near that, by continuing their respective courses, there would be risk of coming into collision, each vessel shall put her helm to port, so as always to pass on the larboard side of each other.

But although there may be a rule of the sea, yet a man who has the management of one ship, is not allowed to follow that rule, to the injuring of the vessel of another, when he could avoid the injury by pursuing a different course.

Where a sailing vessel, which was towed by a steamboat on the Mississippi River, ran into another vessel, through the negligence of the master of the steamboat, the owner of the sailing vessel was held not liable for the damage sustained by the other vessel. The collision, in such case, is as directly attributable to the steamboat as if she herself had come into collision with the other vessel. The towed ship is the passive instrument and means, by which the damage is done.

A vessel at anchor in a navigable river, or port of much commerce, ought always to have a light hung out conspicuously in dark nights.

The vessel to windward is to keep away when both vessels are going the same course in a narrow channel, and there is danger of running afoul of each other. In a river, if a light vessel is going free, and a loaded vessel is coming close-hauled to the wind, it is the duty of the loaded vessel to keep her course, and of the vessel going free to bear away.

In New York, every boat navigating the canals at night, is required to carry conspicuous lights on its bow.

When boats meet on the canals, it is the duty of the master of each to turn out to the right hand, so as to be wholly on the right side of the middle of the canal.

A neglect of due means to check a vessel entering a river or harbor where others lie at anchor, is a fault which creates responsibility for damages which may ensue.

But if a vessel anchors in an improper place, as in the thoroughfare pass of a river, her owner must abide the consequences of a collision.

An order to put a steamboat under headway, under her usual press of steam, just as she is entering a narrow channel, at night, when it is difficult to distinguish objects, amounts to gross neglect.

CHAPTER V.

MERCHANT SHIPPING.

CHARTER-PARTY.

A CHARTER-PARTY is a contract for the letting of the whole or part of a ship to a merchant, called the freighter or charterer, for the conveyance of goods for one or more voyages, and is either under seal or in writing only.

But a memorandum of a charter party, or heads of agreement for the formation of one, are as common between the ship-owner and freighter as charter-parties themselves; and are equally as binding as if a more formal instrument had been executed.

1. *The Usual Stipulations.* — Charter-parties on the part of the owner or master, are, that the ship shall be tight and staunch, that is, seaworthy, and in a condition to carry the goods; that she shall be furnished, with all necessaries for the intended voyage, as well on her departure as in the course of the voyage; that she shall be ready by a day appointed to receive the cargo, and shall wait a certain number of days to take it on board; that, after having received her laden, she shall sail upon the destined voyage, with

the first fair wind and opportunity (the dangers of the seas and accidents excepted), and deliver the goods at the destined port, to the merchant or his assigns, in the same condition as they were received on board; and further, that during the course of the voyage the ship shall be kept tight and staunch, and furnished with a sufficient and competent crew, and with all stores and necessaries, to the best of the owner's endeavors.

The freighter, on his part, usually covenants to furnish a cargo, and to load and unload the ship within a limited number of days, (which are called lay or running days,) after she shall be ready to receive the cargo, and after arrival at the destined port; and to pay the freight after the rate and at the time appointed. It is also usually stipulated that the ship shall, if required, wait a further time to load and unload, and (in the time of war) to sail with convoy, for which the freighter covenants to pay a rate of demurrage per diem, in case of the vessel's detention beyond her lay or running days. Sometimes, also, particular clauses are introduced in favor of the owners, to take away their responsibility for embezzlement by the master, or other matters, for which they would otherwise be responsible. The deed then concludes with a penal clause binding each of the parties, his heirs, and executors, in a pecuniary penalty, for the true performance of their respective covenants.

2. *When it takes its Effect and Operation.* — A charter-party takes its effect and operation from the day of its execution or delivery, and not from the day of its date, if different from the day of delivery, unless the contrary should appear on the face of the instrument to have been the intention of the parties.

3. *By whom it may be Executed.* — This instrument is executed by the parties privy to it, namely the shipowners or the master,and the owners of the goods or freighters. It may be also executed by an agent lawfully authorized on the part of the owner, or merchant, who may covenant in his own name for performance by his principal, so as by force of the deed to answer for his principal's default. But if the authority of such agent arises from a power of attorney, then the execution must be in the name of his principal.

When the master executes the charter-party, his act will not bind the shipowners, unless he have been authorized, by deed or power of attorney to enter into such contract.

4. *Its Construction.* — It is a general rule that the construction of charter-parties should be according to the principles of equitable interpretation, and, therefore, where it was covenanted that the ship should sail on the intended voyage with the first fair wind, it was held not to mean the next wind, but such a wind as would enable the vessel to perform the voyage.

Neither will a short delay in setting sail, or any trifling departure from the direct course of the voyage, annul the contract, and leave the shipowner without consideration. Should the charterer have sustained any loss thereby, or have been put to any extraordinary expense, he is entitled to a compensation commensurate thereto in a cross action. Where a ship is freighted to go in ballast to a certain place; if she do not arrive by the specified time, the

freighter is discharged from his contract to furnish a cargo. So where a ship is freighted to take in a lading, and on arrival at the place of shipment, the lading cannot, from political or other circumstances, be effected, the freight stipulated for is due, provided the master has waited the time agreed for by the charter-party; notwithstanding that the ship returns in ballast, or that the master has taken a cargo on board, either on his own account, or that of the owners. And where the freighter has received some benefit, and the owner has rendered some service to the freighter, though only by the performance of part of the duty for which he contracted, he will be entitled to a remuneration, *pro rata*, for such part; but in the case of only part performance, the freighter will be entitled to recover a satisfaction in a cross action for the damage he has sustained by the imperfect performance of the contract, or its non-completion. If, before the departure of the ship, war or reprisals should be declared with the state to which the ship is bound, the charter-party is, *ipso facto*, dissolved, and neither party is liable to any damages or charges. But if the ports of the state to which the ship is bound be shut only for a time, by embargo or otherwise, the charter-party is still valid, and neither the freighter nor owner will have any claim for damage on account of the suspension of its performance. Should, however, the performance of the voyage have been prevented by embargo laid by the government upon foreign ships, the owner is discharged from his contract. Also, if the performance of the covenant has been rendered unlawful by the government of the contracting parties, the contract is dissolved. The usage of trade in general, and of the particular trade to which the contract relates, is also given effect to in the construction of charter-parties, provided such usage be good, and reasonable, and general. But although a charter-party is construed according to the principles of equitable interpretation, and that effect is given to the presumed intention of the contracting parties, yet positive and specific stipulations, however hard they may be, or incautiously entered into, will bind the parties.

Where, by the particular terms of the charter-party, coupled with the nature of the service in which the ship is employed, an intention to transfer the ownership to the charterer appears, such a possession or temporary property will be deemed to be vested in him as not to restrain his full and free use and employment of the vessel; and though the owner of the ship should, under such circumstances, appoint the master and crew, it will not alter the case.

BILL OF LADING.

Bill of Lading is the acknowledgment given by the master of a ship for goods shipped. It is a negotiable instrument. Several parts or copies are made out, one for the use of the master, the others for the shipper, who, by means of them, can give a title to the consignee or other person for whom the goods are destined, to receive them.

When the goods are put on board, a receipt is generally given by the master; this is afterwards exchanged by the holder for the bill of lading. It will be observed that there is a clause, as in bills of exchange drawn in sets, providing that one set being honored, the

others are void. The bill has two objects. It fixes the amount and condition of the goods received, and for which the shipmaster is responsible, [*See Freight*,] and conveys a title to demand delivery. It may, like a bill of exchange, be negotiated by simple indorsation and delivery, which will carry a right to the goods. No intimation to the shipmaster is necessary, he being bound to deliver to the holder. Notwithstanding the delivery of the negotiable instrument, the goods are still liable to be stopped *in transitu*, as in the hands of a middleman before they reach the consignee. [*See page* 53.] If the bill has been endorsed for value by the consignee, or his authorized agent, the property is passed, and the right to stop ceases. The right to stop is not barred by delivery of the bill unindorsed to a third party, nor by indorsation without value, or with knowledge on the part of the indorsee that the goods will not be paid for by the indorser, and that the transaction is fraudulent, nor where the indorsee has received notice of the consignee's insolvency. The indorsee however is not held bound to inquire into the ability of the indorser to pay for the goods, and to secure him it is not necessary that he should take the bill without notice that the goods have not been paid for; it is sufficient if he have not received notice of such circumstances as rendered the bill of lading not fairly and honorably assignable. Partial value will give an onerous right to a corresponding extent, and to that extent bar stoppage. Where the indorsee undertook to make advances which he failed to make, it was held that a claim on previous advances was no bar to the right to stop; but where the consignee, before his insolvency, and before the goods had arrived, has endorsed the bill of laden to a third party as a security for advances, the equitable right of the unpaid vendor to stop the goods (although he has no strictly legal right to resume possession even after the claim is satisfied) continues, subject only to the amount of such claim; and if the indorsee holds in his hands any other property belonging to the insolvent, the unpaid vendor has an equity to compel him to resort to it in the first place.

FREIGHT.

FREIGHT, in its legal acceptation, is the money agreed to be paid for the carriage of goods from their port of lading to their port of discharge; and may be made payable either for the whole or part of a ship or cargo; or for the whole or part of the voyage; or by the month, or any other stipulated period.

In considering this subject, I shall distribute it into the following heads. 1st. The computation of freight; 2dly. When the whole freight is due; 3dly. When part only is due; 4thly. When Goods are deteriorated; 5thly. The lien for freight; 6thly. By whom freight is payable; and, 7thly. To whom freight is payable.

1. *The Computation of Freight.* — In framing a charter-party of affreightment, the burthen of the vessel, and the amount of the freight, as well as the particular nature of the voyage, are of material consideration. For where an entire ship, or the entire part of a ship, is freighted for a gross sum, whether the burthen is expressed or not in the charter-party, the gross sum is payable,

although the ship should not be of the stipulated burthen. But should there be a warranty as to the burthen of the ship, then the freighter may recover damages for the owner's breach of warranty.

The amount of the freight is usually settled in express terms in the charter-party or bill of laden, and is generally a gross sum, or so much per ton, cask, bale, &c. Where the stipulated payment is a gross sum for the whole ship, or for any distinct part of it, the gross sum is payable, though the freighter should not be able to complete his lading. If the agreement specifies payment to be made for every ton burthen of the vessel, such payment is to be made according to the actual measure and capacity of the vessel, and not according to the quantity of the goods laden.

If the agreement be to pay a certain sum for every ton, cask, or bail, &c. freight is payable only for as many tons, &c., as have been laden on board.

But where payment is to be by the ton, pipe, pack, &c., freight is not payable for any of the subdivisions of a ton, pipe, pack, &c., unless it is specified in the charter-party that a proportionate freight is to be paid for any less quantity than a ton, pipe, pack, &c., or that the freight is to be paid at the rate of so much per ton, pipe, pack, &c.

As to the payment of freight for the conveyance of living animals, whether men or cattle, which may die during the voyage, the following distinction has been taken. If the agreement be to pay freight for lading them, the owners will be entitled to freight notwithstanding their death; but, if for transporting them, then no freight is due for those that die on the voyage. No freight, however, is due for an infant born during the voyage.

Where goods are to be carried at different rates of freight, the proper measure of damage is to estimate the freight by means of one average computation.

Where the freighter puts on board the vessel more goods than his charter-party of affreightment specifies, the freight for the extra goods is to be computed at the rate of payment fixed by the contract or at the usual price for the carriage of such goods.

But where the freighter has the option to load with goods at a higher price, or partly with goods at a lower rate, and partly with goods at the higher price, if, after he has made his election to load with goods at the higher price, he fails to furnish a complete cargo, he is liable to pay the higher freight for the whole cargo.

In general, the chance of the duration of the voyage falls upon the owner of the vessel, unless the freighter stipulates to pay a certain sum for every month, or other portion of the time of the voyage; in which case, the freighter is liable, at the rate of the stipulated freight, for all necessary delays, which may occur by winds and seas, or in harbor for repairs. If no time is fixed for the commencement of the computation, it will begin from the day on which the ship breaks ground, and will continue during the whole course of the voyage, and during all unavoidable delays, not occasioned by hostile capture, or such circumstances as entitle to general average or contribution.

2dly. *When the whole Freight is Due.*—Freight is not due but on the complete performance of the voyage, by the delivery of the goods at the place of destination. And, therefore, if a ship be

captured or lost, no freight can be claimed. But if the vessel be captured in the course of her voyage, without any fault on the part of the owner or master, and re-captured, she will be entitled to freight, if she proceed with her cargo to the place of destination.

Where a ship is freighted for an outward and homeward bound voyage, at one entire sum, no freight is due till the full completion of the homeward voyage. But where the freight of the outward and homeward voyage is distinct, if the vessel should be captured or lost on her homeward voyage freight is due for the outward voyage.

Where a ship is freighted for an outward and a homeward voyage, if the freighter should not be provided with the homeward cargo, the master having waited the demurrage-days, specified in the charter-party, and having made protest of the circumstance, he may take on board a cargo on his own account, and yet the freight will be due for the homeward voyage. But should the master have loaded goods on board on his own account, before the expiration of the days of demurrage, the freighter will be entitled to the value of their carriage, in reduction of the freight for which he is liable on account of the homeward voyage.

Where a vessel is freighted from one port to another, and thence to a third port, and so home to the port from which she sailed, (which are called trading voyages), should she be captured or lost before her return to the port from which she first sailed, no freight will be due.

If part of the cargo be thrown overboard for the preservation of the ship and the remainder of the goods, or if the master is compelled to sell a part of the cargo for victuals or repairs; in these cases, if the ship afterwards reach the place of destination, the owners will be entitled to the value of the freight for the goods so thrown overboard or sold.

Although no freight is due unless a vessel completes her voyage, and delivers her cargo at the port of delivery, yet if advance money has been paid, and described as such in the charter-party, the freighter cannot recover it back, should the ship be lost or captured in her voyage. And on the same principle it has been decided that passage money, paid in advance, is not recoverable in case the vessel be wrecked, or unable to prosecute her voyage.

3dly. *When only part of the Freight is Due.* — Though by the general rule of law, freight is not due, unless the voyage have been completely performed, and the cargo delivered at the port of destination, yet, in certain cases, where the nature of the service is such that a partial performance is a proportion of beneficial service to the freighter, or that the freighter himself, or his agents, or consignee, dispense with the performance of the voyage, and accept the cargo at any other place than that of its destination, the ship-owners will be entitled to an apportionment of freight, or a claim *pro rata itineris peracti.* So, where, by a charter-party, freight is payable at a certain sum per ton, cask, bale, &c., on delivery of the cargo, and the delivery of part is prevented by an act of the consignee, or by one of the perils excepted against, freight is due for the part delivered.

Where a freighted ship becomes accidentally disabled on her voyage, or suffers shipwreck, and but part or the whole of the

cargo be saved, it is the duty of the master to provide or offer to provide another vessel, or to refit his own, (if that can be done within a convenient time,) in order to convey such part or the whole of the cargo to its port of delivery; and if the freighter declines to accept such conveyance, he is liable for the whole freight of the full voyage.

Where freight is contracted for monthly, or for any other stated periods, and the ship is lost or captured, the ship-owner is entitled to freight for the number of months which have transpired previous to the loss or capture.

4thly. *When Goods are Deteriorated.* — When goods are deteriorated during the voyage, the merchant is entitled to a compensation, provided the deterioration has proceeded from the fault or neglect of the master or mariners; and of course he is not answerable for the freight, unless he accept the goods, except by way of deduction from the amount of the compensation. On the other hand, if the deterioration has proceeded from a principle of decay naturally inherent in the commodity itself, whether active in every situation, or in the confinement and closeness of a ship, or from the perils of the sea, or the act of God, the merchant must bear the loss and pay the freight; for the master and owners are in no fault, nor does their contract contain any insurance or warranty against such an event. In our West India trade, the freight of sugar and molasses is usually regulated by the weight of the casks at the port of delivery here, which, in fact, is in every instance less than the weight at the time of the shipment; and, therefore, the loss of freight occasioned by the leakage necessarily falls upon the owners of the ship by the nature of the contract. Different opinions have been entertained by Valin, Pothier, and other great authorities as to maritime law, with respect to the expediency of allowing the merchant to abandon his goods for freight in the event of their being damaged. This question has not been judicially decided in this country. "The only point," says Lord Tenderden, "intended to be proposed by me as doubtful, is the right to abandon for freight alone at the port of destination: and in point of practice, I have been informed that this right is never claimed in this country." Freight being the return made for the conveyance of goods or passengers to a particular destination, no claim arises for its payment in the event of a total loss; and it is laid down by Lord Mansfield, that "in case of a total loss with salvage, the merchant may either take the part saved, or abandon." But after the merchant has made his election, he must abide by it.—*M'Cul. Dict., p.* 688.

5thly. *The lien for Freight.*—The payment of freight is usually made an express condition of the goods in charter-parties and bills of lading; and of course the ship-owner or master has a right, unless there is an express stipulation to the contrary, to withhold the delivery, until the freight be paid. But though the ship-owner or master has a lien on goods for the freight, yet, if he is doubtful of payment, he should not detain the goods on board the ship, but should land them in some public dock or wharf, and order the dock-keeper or wharfinger not to part with them, until the freighter discharges his demand for freight and other charges.

Where, by the regulations of the revenue, or the operation of the

law, the goods are to be landed and deposited in the public warehouse, until payment of the duties, the master or ship-owner may enter them in his own name, and the lien will thereby be preserved in the place and in the hands where the law has deposited them; and that although he has not given notice to the party in whose hands they are so deposited to retain for his claim.

But no lien can exist unless freight has been earned; and freight cannot have been earned until the goods have been brought to the place of destination, or that performance of the contract of affreightment has been waived by the freighter or his agents. And, therefore, where the freight is prevented from becoming due by any negligence or misconduct of the freighter or his agents, the ship-owner has no lien on the goods, but must seek his remedy in an action for damages.

And where the hull or whole vessel is chartered, the owner of the vessel can have no lien for the stipulated freight on the goods shipped; because the charterer has a constructive possession of the vessel for the specified voyage, nor will the charterer's temporary property be divested by the payments of the master and crew and by the owner. But if the charter-party contains nothing, either in its language or in its object, which can import that the charterer was to exercise a temporary ownership over the ship, then the ship-owner's right of lien is not divested.

6thly. *By whom Freight is Payable.* — The Consignee, if he accepts the goods, makes himself responsible for the freight, where the bill of lading stipulates for the payment by the consignee; but if he refuse to pay the freight, the master has his remedy over against the shipper.

7thly. *To whom Freight is Payable.* — With respect to the parties entitled to receive freight, it is a general principle of law and equity, that the party with whom the contract is made is the person entitled to it, but in the case of sale of chartered vessels, the vendee of a chartered ship, sold before the commencement of the voyage, is entitled to the freight. Where, however, the ship has been sold during the voyage, the vendor is entitled to the freight. A mortgagee who does not take possession is not entitled to freight.

BOTTOMRY AND RESPONDENTIA.

Bottomry is in the nature of a mortgage of a ship, when the owner borrows money to enable him to proceed on his voyage, and pledges the keel, or *bottom* of the ship, as security for repayment. In this contract it is understood, if the ship be lost, the lender loses his whole money; but, if it return in safety, then he shall receive back his principal, and also the premium or interest agreed upon, however it may exceed the legal rate of interest. If the ship and tackle be brought home, they are answerable for the money lent, as well as the *person* of the borrower. But if the loan is not upon the vessel, but upon the goods and merchandize, which must be necessarily sold or exchanged in the course of the voyage then only the borrower, personally, is bound to answer the contract; who, therefore, in this case, is said to raise money on *respondentia.*

In this consists the difference between *bottomry* and *respondentia;* the one is a loan upon the ship, the other a loan upon the goods. In the former case, the lender runs no risk, though the goods should be lost; in the latter, the lender is entitled to principal and interest though the ship be lost, provided the goods are safe, The bottomry and respondentia bonds usually express the nature of the risks to which the lender is liable, and are nearly the same against which the underwriter, in a policy of insurance, undertakes to indemnify. These risks are tempest, fire, capture, and every other casualty, except such as arise either from defects in the ship or merchandize on which the loan is made, or from the misconduct of the borrower.

The respondentia interest is frequently at the rate of 40 or 50 per cent., or in proportion to the risk and profit of the voyage. The respondentia lender may *insure* his interest in the success of the voyage. [See "*Rights of Seaman*," pp. 87-89.]

DEMURRAGE.

Is a compensation or allowance to be paid by the freighter to the owner of a vessel, in case she is obliged to wait beyond her lay or running days to receive or unload her cargo, either before or after the voyage.

The *time* allowed for demurrage is generally stipulated in the *charter-party, or bill of lading;* but where no time is fixed, but the stipulation is, that the freighter shall be allowed "the usual and customary time," *the period allowed for the lading or discharging of the cargo is regulated according to the custom of the port.*

Where a bill of lading has a note on the margin importing that the goods are to be removed at a certain time, otherwise a certain sum per day is to be charged for delay, whoever claims the goods under the bill becomes responsible for the sum.

But where the revenue laws do not require that the cargo should be deposited in the bonding warehouse, the freighter shall be subject for demurrage for the detention of the vessel beyond the time stipulated in the charter-party, although, on account of the crowded state of the docks, it is impossible for the vessel to get a berth to unload, unless express provision has been made to that effect in the charter-party.

Demurrage is due though the vessel is detained in the port of lading or delivery, by the port regulations or custom-house restraints, or the unlawful seizure of the goods by the custom-house officers, or the want of any necessary papers which it is the duty of the freighter to provide; it being a general rule that the freighter is liable for demurrage for all delays arising in the port, occasioned by any cause whatever, provided that the ship be ready to receive or deliver the cargo. But where the condition of the charter-party is, that the ship shall be *unloaded and discharged within the usual and customary time of ships in the port of delivery and discharge, or within a reasonable time,* the freighter is not liable for any delay which may arise from the ordinary course of business in the port or custom-house in the place of discharge, whether such delay be occasioned either from the crowded state of the port, or

from the routine or ordinary course of business in the bonded warehouse, or the port or custom-house of the place of discharge.

Nor is a freighter discharged from the payment of demurrage, on account that he had no knowledge of the ship's arrival; for neither the master nor broker is bound to give any notice thereof. So, if a ship be chartered to a foreign port, and the freighter covenant to furnish a lading there, a prohibition by the government of the country to export the cargo will not discharge the freighter from his liability for demurrage, unless the captain knew of such prohibition before he entered the port. So a detention rendered inevitable by a physical obstacle, as where a ship was detained in port by being frozen in, is a demurrage for which the freighter is liable.

But demurrage can never be claimed against the freighter while the ship is waiting for convoy, or in the case of capture and recapture, or of the hostile detention of the ship, or the hostile occupation of the port of her destination.

The payment of demurrage stipulated to be made while a ship is waiting to receive a cargo, or for convoy, ceases, in the first case, as soon as the ship is fully laden, and the necessary clearances are obtained; and in the second, as soon as the convoy is ready to depart; although the ship, in either case, happen to be detained by adverse winds or tempestuous weather. And if, after having once set sail on her voyage, she is driven back into port, the claim of demurrage is not thereby revived.

The rate or price of compensation for demurrage is usually stipulated in the charter-party; but where it is not, it may be regulated by the burthen of the ship, or the quantity of the goods she is freighted to carry, or the damage which she is likely to sustain from remaining in the port where she is detained, or the loss sustained by not being able to employ her in another service, or the like, and this is to be ascertained by the opinion of mercantile men, conversant with such subjects.

If a chartered ship is detained beyond her days of demurrage, *prima facie*, the sum payable for those days is also the measure of compensation for the extended time. But it is open to the shipowner to show that more damage has been sustained, and to the freighter that there has been less than would thus be compensated.

By the usage and custom of merchants, the word "days," used alone in a clause of demurrage, mean working-days, and not running days; and working or running days do not comprehend Sundays or Custom-house days.

The freighter is subject for the demurrage of the outward voyage, and the consignee for such as may be occasioned by the detention of the vessel for his benefit. But this, of course, can refer only to cases where there is no charter-party under seal; for no other than the parties to an instrument, or their personal representatives, can be sued upon it.

Freighters under, or holders of bills of lading, are liable for demurrage *pro rata*, that is, in proportion to their share of the cargo.

[*For further information on the subject of Delivery of Goods, see pages* 11, 12, 13, 19, 43, 44.]

FORMS.

*Notice of Abandonment.** (See page 86.)

To the President, Directors and Company of B —n Insurance Co.

You will please take notice, that I, A. B., of the city of New York, merchant, hereby abandon to you all my right, title, interest, property, and claim in and to the ship —— and her cargo; and every part and parcel of them; or either of them: and I demand of you the sum of——dollars, underwritten by you on my interest in said ship and cargo, as for a total loss

New York, Jan., 1852. A. B.

Assignment of Insurance.

Know all men by these presents, That I, the within named A. B., for and in consideration of the sum of —— dollars to me paid by C.D., of ——, (the receipt whereof is hereby acknowledged,) do grant, sell, assign, transfer and set over to him, the said C. D., all my right, property, interest, claim and demand, in and to the within named policy of insurance, which have already arisen or which may hereafter arise thereon, with full power to use my name, so far as may be necessary to enable him fully to avail himself of the interest herein assigned.

The conveyance and power herein made, and given, are intended to bind myself and my legal representatives to said C. D., and his legal representatives.

In testimony whereof, I have hereto set my hand, and seal, this —— day of ——, A. D. eighteen hundred and fifty.

A. B. (L. S.)

Signed, sealed and delivered in the presence of

Assignment of a Sailor's Wages.

Know all men by these presents, That I, A. B., of——, for and in consideration of the sum of —— dollars, to me paid by C. D., of ——, (the receipt whereof is hereby acknowledged,) do grant, sell, assign, and set over to him, the said C. D., all such sum or sums of money as are now due and owing to me, for wages or services on board the ship, or vessel, called the ——, from the master or owner of said vessel, on board of which vessel I served as a mariner on her voyage from Liverpool to New York, which has recently terminated. And to enable the said C. D. the better to recover and receive the same, I do hereby appoint him my attorney irrevocable, with full power in my name, but at his charge, to prosecute any and all persons liable therefor, and receive and recover the same, and give discharge therefor.

And I do covenant with the said C. D., that I have not assigned or released the above-named sum or sums of money to any other person or persons whatever, and that I will, at his request, and at his charge, execute to him all and every further conveyance and assurance that may be deemed necessary to enable him fully to avail himself of the benefit of this assignment.

In witness whereof, I have hereunto set my hand, &c., [as above.]

A. B. (L. S.)

Signed, sealed and delivered in presence of

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* Though no form be prescribed for this act, yet care should be taken, that it be unconditional, explicit, and on sufficient ground; and, *particularly, that the accident occasioning it be described with certainty*, so as to enable an under writer to determine whether he be bound to accept. — 1 *John.* 181.

Survey of a Ship and Furniture.

We A. B. and C. D., ship-masters, and E. F. and G. H., shipwrights, all resident within the —— of ——, do hereby jointly and severally declare and attest, unto all whom it may concern, that on the —— day of ——, at the instance of I. K., of, &c., we went on board and alongside the —— called the ——, of the burthen of —— tons or thereabouts, to examine the said ——, her hull, masts, yards, anchors, cables, rigging, running rigging and sails, and every other store to her belonging; and having carefully and particularly inspected, examined and surveyed the said —— called the ——, and her several stores, do report, that the said vessel's hull, masts, &c. are fit, [or unfit,] to proceed to sea; all which we are ready to affirm upon oath, when thereto required.

In witness whereof, we have hereto set our hands, &c.

Survey of Goods.

We whose names are hereunto subscribed have this day, at the instance and request of A. B., master of the —— called the ——, and bound on a voyage to ——, laden with ——, duly and carefully surveyed and examined the cargo of the said ——, which has been landed and stored in warehouses by order and direction of Mr. C. D. ——, of the said ——, under his and the —— locks, and who is appointed for and by the said A. B., the master of the said —— as aforesaid: We therefore do hereby certify and declare, that on such survey we have carefully examined the whole of the said cargo, and find the same so much damaged, and in a perishable state, as not fit by any means to be reshipped.

Given under our hands this —— day of ——, in the year of, &c.

Valuation of a Ship by two Shipwrights.

We, the undersigned, A. B. and C. D., shipwrights, residing in B——, do hereby certify and attest, that at the instance and request of E. F., we viewed, inspected, examined, and surveyed the Brig called the Boston, belonging to G. H. of Salem, Mass., together with her tackle, apparel, &c., and do accordingly value and appraise the said ship, with her tackle, apparel, &c., at the sum of ————.

In witness whereof we have hereunto set our hands, &c

Receipt for Seamen's Wages.

Received of Captain ——, master of the ship ——, of ——, the sum of ——, in full for wages, and in satisfaction of all other claims and demands whatsoever, on the said captain and owners, during the time of my service on board the same ship, (or any other ship belonging to the same owners.)

Witness my hand at ——, this —— day of ——, 18—. A. B.

Witness, C. D.

$——

Letter of Attorney from a Sailor to his Wife to receive his Wages, &c.

I, A. B., of, &c., mariner, do constitute and appoint my loving wife, C. D., my true and lawful attorney, for me, and in my name, and for my use, to ask for, demand and receive, of and from all and every person and persons whatsoever, as well all such sum and sums of money as now are, or which shall or may at any time hereafter become due and owing to me for wages, from any ship or ships to which I now do or may belong; as also all and other moneys now due, or to become due and owing to me by

any other ways or means whatsoever; and upon non-payment either of the whole or of any part of the said pay, or other demands, I do hereby authorize and empower my said wife to bring a suit or suits in law, in my name, for the recovery thereof.

In witness whereof, I have hereunto set my hand and seal this —— day of ——, 1850—. A. B. (L. S.)

Signed, sealed and delivered in presence of

Adjustment of General Average. (*See Page* 74.)

Amount of Losses.		*Value of articles to contribute.*	
Goods of A. cast overboard,	$500	Goods of A. cast overboard,	$500
Damage of the goods of B. by the jettison,	200	Sound value of goods of B. deducting freight and charges,	1,000
Freight of the goods cast overboard,	100	Goods of C.	500
Price of a new cable, anchor, and mast, $300		Of D.	2,000
Deduct one third, 100	200	Of E.	5,000
Expenses of bringing the ship off the sands,	50	Value of the ship,	2,000
Pilotage and port duties, going into the harbor and out, and commission to the agent, who made the disbursements,	100	Clear freight, deducting wages, victuals, &c.	800
Expenses there,	25	Total of contributory value,	11,800
Adjusting this average,	4		
Postage,	1		
Total of losses,	$1,180		

Then $11,800 : 1,180 :: 100 : 10.

That is, each person will lose 10 per cent. upon the value of his interest in the cargo, ship, or freight. Therefore

A. loses	50	D.	200
B	100	E.	500
C.	50	The owners,	280

Total 1,180 which is the exact amount of losses.

Upon this calculation, the owners are to lose $280, but they are to receive from the contribution $380 to make good their disbursements, and $100 more for the freight of the goods thrown overboard, or $480, less $280.

They therefore are actually to receive,	$200
A. is to contribute $50, but has lost $500 therefore is to receive,	450
B. is to contribute $100, but has lost $200; therefore is to receive	100
Total to be actually received,	750
On the other hand, C. D, and E. have lost nothing, and are to pay as before, viz:	
C.	$ 50
D.	200
E.	500
Total to be actually paid,	$750

which is exactly equal to the total to be actually received, and must be paid by, and to, each person in rateable proportion.

CHARTER-PARTY.

[From the Mercantile and Maritime Guide, London Ed., 1856]

There is nothing to prevent this contract from being verbal, but in practice it is always reduced to writing, and the written instrument containing the terms of it is called a *charter-party*. It may be under seal or not.

The words *or thereabouts* are generally understood to mean about five tons; but in one case, where a ship was described as of the burthen of 261 tons or thereabouts, and the freighter undertook to find a full cargo, and no fraud was imputable to the owner, the freighter was held bound to find an actual full cargo, though the ship carried 400 tons.

Goods may be packed according to the custom of the loading port, and so may form a full cargo, although it may be possible to pack them in less compass. Thus, sugar may be packed in hogsheads, if such is the custom, though it would take less room in tierces.

A charter-party being an agreement drawn up at the discretion of the parties, they may of course introduce any terms they agree upon.

The ship and freight and cargo are often bound in a penalty by the owners or master and the freighters respectively, for the performance of their undertakings. But these clauses seem to be of no utility; for in an action for the failure of the undertakings, the plaintiff would recover to the amount of the injuries he had suffered, and in no case, whatever penalty might be introduced, could he recover more.

Form of a Charter Party, Inwards.

LONDON, 5th JUNE, 1856.

It is this day mutually agreed between *Mr. A. Gordon*, owner of the good Ship or Vessel called the *William*, whereof *J. Robinson* is now Master, of 223 Tons, or thereabouts, Register Measurement, now *on her passage from London to Malta*, and Messrs. *Bovet & Co.* of London, Merchants.

That the said Ship, being tight, staunch, and strong, and every way fitted for the Voyage, shall, with all convenient speed, *after discharging her cargo of coals at Malta*, sail and proceed to CONSTANTINOPLE, and thence, as there ordered, to ODESSA, or KERTCH, or so near thereunto as she may safely get, and there load from the Factors of the said Merchant, a full and complete Cargo of Tallow, Wood, Wheat, Seed, or other Stowage Goods or Grain, at the option of the Freighter, not exceeding what she can reasonably stow and carry over and above her Tackle, Apparel, Provisions, and Furniture; and being so loaded, shall therewith proceed to FALMOUTH or CORK, at the Master's option, for orders to discharge, at a SAFE PORT in the UNITED KINGDOM, HOLLAND or BELGIUM, or so near thereunto as she may safely get, upon being paid Freight as follows

From ODESSA, or KERTCH.	To the United Kingdom.			To Holland or Belgium.			
	£	s	d	£	s	d	
For Tallow,.....	3	0	0	3	10	0	
For Wool,.....							} Per Ton 20 cwt. gross
For Flax and Hemp of all sorts,.....							
For Wainscot Logs,.....							Per Load of 20 cubic ft.
For Wheat,.....							Per Imperial quarter.

Should the Vessel be ordered to Kertch, the Charterers to have the option of sending her to a port in the Sea of Azof to load, on paying ten shillings per ton additional freight.

The Freighter to have the liberty of shipping ——— staves as broken stowage *only*, at £22 per Standard Mille.

Other Stowage Goods, Seed or Grain, if any, in the customary proportion, according to the London Baltic printed rates; being in full of all Port-charges, and Pilotage, as customary. The Freighter engages to provide the necessary Mats for Dunnage. One-half the Freight to be paid Cash on unloading and right delivery of the Cargo, and the remainder by approved Bill at Three Months following, or in Cash at the Freighter's option, deducting the usual interest. (The Act of God, the Queen's Enemies, Fire and all and every other Dangers and Accidents of the Seas, Rivers, and Navigation, of whatever Nature and Kind soever, during the said Voyage, always excepted.) Cash for Ship's use to be advanced to the Master at the Port of Loading, by the Freighter's Agents, free on Commission, against his Draft for the same on the Owners or Brokers if LONDON. *Twenty* running days are to be allowed the said Merchant (if the ship is not sooner despatched) for loading and unloading; and Ten Days on demurrage over and above the said lying days, at *Four* Pounds per day. Detention by Frost or Quarantine not to be reckoned as lay days.

It is further agreed, That on the Ship's arrival at ODESSA, or KERTCH, the Freighter's Agents shall have the option of employing her for One intermediate Voyage in the Mediterranean, paying two-thirds of the above Freight if the Ship discharge at a Port in ITALY or AUSTRIA, and three-fifths thereof if she should discharge at a Port in FRANCE, *thirty* running days to be allowed for loading and unloading. Such Freight to be paid in Cash at the Port of delivery, or by approved Bills at usance on LONDON. If loaded for a French Port, the Captain is to call at Malta, and take fresh Clearances and Bills of Lading from the Shipper's Agents, who are to pay the Ship's Port Dues. Penalty for Non-performance of this agreement *Eight Hundred Pounds.*

The Freighter to be allowed to discharge the Ship in one of the Docks in the RIVER THAMES, *upon paying two-thirds of the Dues. The Ship is to be addressed to Messrs Dickson & Co.,* ODESSA, *or to their Agents at the other Ports; and to the Freighter's Agents, if ordered to discharge at any Outport in the United Kingdom, Holland, or Belgium.*

Two additional lay days are to be allowed, if one-third or more of the cargo should consist of Wool.

Witness to both the signatures, *(Signed)* A. GORDON.
J. JONES. BOVET & Co.

In a charter-party on a voyage out and home, where running days are allowed for "loading, discharging, and reloading," these words do not apply to the discharging of the homeward cargo in the United Kingdom, and the owner is not entitled to demurrage for a reasonable time occupied in discharging the cargo in the London docks. The great variety of circumstances occasioned by different voyages naturally produces a correspondent diversity in the clauses of charter-parties. The general conditions of such documents, for commercial purposes, seldom, however, materially varv from the above, and the *Form of a Charter-party, Outwards.*

SHIP'S PROTEST.

Protests relating to various Mercantile Subjects.

On the arrival of a vessel at her port of destination, it is the custom for the master to cause an entry or note of a protest to be made, which is signed by him at the office of a notary.

It should contain some particulars of the voyage, such as the name of the vessel, and of the master, the port whence she came, the time of her departure, the nature of her cargo, and the date of her arrival. This ceremony is called noting a protest, or entering a note of a protest; and should be done within twenty-four hours after arrival.

The same ceremony is also performed by a master of a vessel after any extraordinary accident or injury, if the vessel should be obliged to put into a port other than that of her destination, or to return to the port whence she sailed.

Ship protests are useful and important documents, for various purposes, and especially in matters connected with the adjustment of losses, in marine insurance, and for reference on the calculation of general averages, and ought to be prepared with attention, care, and impartiality.

Whenever it happens, either from the ship or cargo being lost or injured, or any other circumstance, that it becomes necessary to have a regular protest made, or extended, the course to be pursued, is to cause it to be prepared by a notary, from the information as to the facts, to be derived from one or more of the crew, or from the Log Book, and for the master and others of the crew, (generally the master, mate, and two or more seamen,) within a reasonable time after arrival, to sign and make oath to it before the notary; and it is not material to have it so extended before the same notary in whose office it was noted.

There is not any precise form generally adopted for a ship protest, and in fact the mode in which it is drawn up, varies exceedingly; it generally consists of two parts, the first is a statement or declaration of the facts and circumstances of the voyage, and of the storms or bad weather which the vessel may have encountered, or any accidents which may have occurred, during the course of it; and the other is the part in which the appearers or the notary, or both the appearers and the notary, protest, against the accidents, or causes of the injury, and against all loss or damage occasioned thereby, and at the end or foot is an attestation or certificate under the hand and seal of the notary.

The protesting part is too often spun out to an unnecessary and absurd length; it is a mere form, and a few words are sufficient.

Entry or note of a Protest of a Ship (common form).

Note and Entry of Ship Mary.

On this —— day of ——, in the year one thousand eight hundred and ——, personally appeared and presented himself at the office of R. B., Notary Public, C. D. master of the ship or vessel, the Mary, which sailed on a voyage from L. on the —— day of —— last, and arrived at G. on the —— of —— instant, laden with a cargo of ——. And the said master hereby gives notice of his intention of protesting, and causes this note or minute, of all and singular the premises, to be entered in this register.

C. D.

Ship Protest, (common form) in consequence of loss or damage by Storms and Tempestuous Weather, and also by Jettison.

UNITED STATES OF AMERICA.

COMMONWEALTH OF MASSACHUSETTS,

Suffolk, ss. City of Boston.

By this Public Instrument of Protest, be it known and made manifest to all whom it doth or may concern,—That on this —— day of ——, in the year of our Lord one thousand eight hundred and fifty—, before me, J. R. B., a Notary Public, duly commissioned and sworn, in and for the County aforesaid, personally came and appeared A. B., master of the ——, belonging to the port of ——, of the burthen of —— hundred tons or thereabouts; and with him also came C. D. mate, and E. F. and G. H., seamen of and belonging to said ——, who, being severally sworn, did declare and depose, that the said ——, being laden with a cargo of ——,

they the said appearers, made sail and departed in and with the said ——, from the port of ——, bound to ——, on the —— day of ——, in the year one thousand eight hundred and fifty—.

That they proceeded on their voyage with fine weather and variable winds, accompanied occasionally with rain, until the —— day of ——, when they had fresh gales from the south-west, and passing squalls, and a heavy sea running, and they shipped large quantities of water on deck and over all parts of the ship, the vessel plunging her bowsprit end under water; at noon being in latitude 14 degrees 22 minutes north, longitude 83 degrees 13 minutes east, they had [*continue the general narrative, or statement of facts, in relation to the disaster, with a particular account of the several losses and injuries sustained, with the causes thereof fully and particularly set forth.*]—And they were obliged, in order to lighten the ship, and for the safety and preservation of the vessel, crew, and rest of the cargo, to throw overboard a portion of the cargo, consisting of (*here describe the goods or articles voluntarily thrown overboard for the common benefit of all concerned*) which was accordingly done.—That they continued on their voyage generally with strong squalls and fresh gales, until the 1st of ——; at ten a. m. the —— light bore east north-east, distant three leagues; at two p. m. took a pilot on board; at six a. m. they got safely moored in the harbor of ——.

That on the —— day of ——, the said first named deponent having arrived at ——, did, within twenty-four hours thereafter, note for protest before J. R. B., to be extended, if occasion should require.

And the said appearers, did further severally declare that the said ——, at the time of her departure from —— as aforesaid, was tight, staunch, and strong; had her hatches well and sufficiently caulked and covered; was well and sufficiently manned, provided, and furnished with all things needful and necessary for said voyage; and that during the said voyage the said appearers and the residue of the crew used their utmost endeavors to preserve the said —— and her cargo from damage.

And therefore the said A. B. did declare to protest, and by these presents he doth solemnly protest against all and every person or persons whomsoever it doth or may concern; and doth declare that all damages, losses, and detriments that have happened to the said —— and her cargo, are, and of right ought to be, borne by the merchants and freighters interested, or their respective underwriters, or whomsoever else it doth or may concern, by way of average or otherwise, the same having occurred as before set forth, and not by or through the insufficiency of the vessel, the neglect of him the said appearer, or either of the mariners belonging to said vessel.

In witness whereof, the said appearers have hereunto subscribed their names, in presence of me the said notary.

A. B.
C. D.
E. F.
G. H.

All which matters and things were declared, alleged, and affirmed before me the said notary. *In testimony whereof*, I have hereunto set my hand and affixed my official seal.

(Seal.) J. R. B. *Notary Public.*

Protest in consequence of a Loss by Collision.

By this Public Instrument, &c., (similar to ship protest.)

That at about half past two, a. m. on the 2nd of February, whilst the vessel was proceeding on her said intended voyage, the other appearer, the said C. D. being below in bed, and the said vessel being between the Great O. and Point L., the wind being about east south-east, with moderate weather and smooth water, the vessel running before the wind and

steering west north-west, under all sail, with a square sail and half topsail set; and this appearer A. B. being then at the helm, and this appearer, the said E. F. being forward, he called out that he saw a light on the starboard bow, and they at first thought it was Point L. light, but it afterwards turned out to be the light of the steamer Etna. That this appearer, the said E. F. immediately went below for a light and brought a lanthorn on deck, and showed the light over the starboard bow, and this appearer, the said A. B. put the helm of the Anne Mary to starboard until the course was altered, from west north-west to south-west, in order to avoid the steamer. That after so altering their course, this appearer, the said E. F. shifted the light from the bow to abaft the rigging on the starboard side, to make it better seen by the crew on board the steamer, and both these appearers, the said A. B. and E. F. called out to the steamer to starboard her helm, and in about five minutes after the light was shown, the steamer struck the Anne Mary, and she went down in a few minutes afterwards. And this appearer, the said C. D. for himself declares, and says that he was below in bed, and was awoke by the said A. B. calling out "steamer ahoy," and immediately ran upon deck in his shirt and drawers, and saw the appearer, the said E. F. holding a lanthorn on the starboard quarter, and this appearer, the said C. D. had not been a minute on deck, before the steamer struck the Anne Mary. And these appearers, the said A. B., C. D., E. F. and G. H. for themselves declare and say, that immediately after the said C. D. came on deck, the steamer struck the Anne Mary nearly a-midships, and for the preservation of their lives, these appearers, and another of the crew of the Anne Mary, jumped on board the steamer, and arrived back at L. in her, on the 2nd of February; and on the same day this appearer, the said A. B. appeared at the office of me, the said notary, and caused his protest to be duly noted. And these appearers do protest, and I, the said notary do also protest, against the said steamer, and the said collision, striking, facts, occurrences, and all loss or damage occasioned thereby.

[*Signed and sealed as in ship protest.*]

Notarial Certified Copy of a Ship's Protest.

To all to whom these presents shall come, I, R. B. Notary Public, duly commissioned and sworn, residing in B— in the county of S—, in the State of ——, do hereby certify, that the paper writing hereunto annexed, purporting to be a copy of a protest of the master and part of the crew therein named, of the ship or vessel the Anne, bearing date the —— day of —— last, is a true and correct copy of the said protest, the same having been carefully examined and compared with the original protest, which was made and declared before me [*or* before C. D. of —— aforesaid, notary public,] [or, *as the case may be*, examined and compared with the original draft of the said protest, drawn up, and registered in my office, and which protest was duly made and declared before me, the said notary.]

In testimony whereof, I have hereunto subscribed my name, and affixed my seal of office, this —— day of ——, one thousand eight hundred and fifty—.

(Seal.) R. B. *Notary Public.*

Protest by Shippers of Goods against the Master and Owners of a Vessel, in consequence of the Master's refusal, after notice, to sign a Bill of Lading in the customary form.

By this Public Instrument of Protest, be it known and made manifest unto all people, that on the —— day of ——, in the year one thousand

eight hundred and fifty—, personally came and appeared before me, R. B. Notary Public, duly commissioned and sworn, residing in B—, in the county of S—, in the State of M—. G. G. one of the firm of G. G. and Company, of B—, merchants, the shippers of goods and merchandise, per the —— the ——, bound on a voyage from B— to C—, and C. D. of B—, clerk to the said G. G. and Company, who being severally sworn, did declare and depose; and first this appearer, the said C. D. for himself, did declare and state as follows; that is to say, that this appearer did attend for the said G. G. and Company, the shippers, and did conduct the delivery on the —— day of —— instant, at and alongside of the said ——, of the goods and merchandise, mentioned in the duplicate (or copy) bill of lading after mentioned. That E. F. the master of the said ship or vessel, signed and gave a bill of lading for the seven chests of merchandise therein mentioned, with the words, "one chest in dispute, if on board to be delivered, contents unknown," written at the foot thereof, and that the said G. G. and Company objected to the same; and that this appearer, the said C. D. was present, and did see the said seven chests of merchandise carefully delivered, at and alongside the said vessel, at L— aforesaid, in the usual manner, and left under the charge of the mate and crew thereof; and that on this —— day of —— instant, this appearer, the said C. D. did deliver to the said E. F. a notice and demand, signed by the said G. G. and Company, of which a copy is hereto annexed, but the said E. F. refused to comply therewith, or to sign or deliver any other bill of lading, in another form.

And the appearer, the said G. G. for and on behalf of himself and of his said co-partner in trade, under the said firm of G. G. and Company, and for and on behalf of all other persons who are, or shall or may be interested in the said goods and merchandise, doth declare and protest before me, and I, the said notary, at the request of the said shippers, the said G. G. and Company, do protest against the owners and the said master of the said vessel, for and in respect of the said refusal and neglect to sign and give a correct bill of lading, for the said goods, in the usual and customary form, and for and in respect of all fall of markets, loss, damage, or expenses, which the said shippers, or any other person or persons, who is, or are, or shall, or may be interested therein, have or hath incurred, or may incur, by reason of the premises.

(Signed and sealed as in Ship Protest.)

Copy of the Notice to the Master referred to in the foregoing Protest, objecting to the qualification introduced into the Bill of Lading, without consent, and demanding a Bill of Lading in the customary form.

To Captain E. F. Master of the ship or vessel called the Frances.

WE, the shippers of seven chests of merchandise, on board the Frances, for C—, hereby give you notice, that we object to the qualification or exception of "one chest in dispute, if on board to be delivered, contents unknown," added without our consent to the bill of lading, signed by you for the said goods, for C—, and that we hold you and the owners of the vessel, responsible for the value and safety of all and every goods, which we shall prove to have been delivered at the said vessel: and we demand and require you, forthwith to sign and deliver to us a bill of lading for the said goods, in a usual, legal, and customary form, and we give you notice, that in default thereof, we protest against you, and we hold you and the owners of the vessel responsible for all loss, damage, or expenses, by reason of the premises.

G. G. and Co.

B—, — day of —, 185—.

Protest, by Merchants, against the Master and Owners, in consequence of the master not proceeding to Sea after signing Bills of Lading.

By this Public Instrument of Protest, be it known and made manifest unto all people, that on the —— day of ——, in the year one thousand eight hundred and fifty—, personally came and appeared before me, R. B. Notary Public, duly commissioned, and sworn, residing in L—, in the county of L—, in the State of ——, A. B. of L— aforesaid, merchant, one of the partners composing the firm of A. B. and Company, who being sworn, did declare and depose as follows; that is to say, that this appearer and his co-partner, under their said firm of A. B. and Company, did, on the —— day of —— last, ship on board the ship or vessel called the Victoria, G. H. master, at L— then bound on a voyage from L— to *(here state the destination, and describe the goods.)* and that the said G. H. the master of the said ship, signed the usual bills of lading for the said goods and merchandise, part expressed to be deliverable to order, and the other part to Messrs. ——, of —— aforesaid; and that soon after this appearer's said firm shipped the said goods on board the said vessel she was ready for sea, and that the wind was fair, and she might have proceeded on her said voyage on or about the —— day of —— last, and that vessels bound to the same port, as the said vessel, have sailed since she was ready for sea, but that she has not done so, although this appearer has repeatedly given notice to, and required the said master, to set sail, and proceed with the said vessel, and the said goods, on board, on her said intended voyage to —, but that she is still lying and remaining in the port of L—. Wherefore, the said appearer, A. B. on behalf of himself and his said firm, and for and on behalf of all other persons who are, or shall, or may be interested in the said goods, doth protest; and I, the said notary, at his request, do protest against the said master, the crew, and the owner or owners of the said vessel, for all negligence, inattention, and delay, and all fall of market, loss, damage, and expenses, which the said appearer or his said firm, or the owners or consignees of the said cargo or goods, may sustain, or be put unto, in consequence of such delay, matters, and circumstances as aforesaid.

A. B.

Thus protested in due form, at L— aforesaid, the day and year first before written; before me,

(Seal.) R. B. *Notary Public.*

Protest by the Master of a Vessel, against the Consignees of Goods, for not discharging and taking them from the Vessel in a reasonable time.

By this Public Instrument of Protest, be it known and made manifest unto all people, that on the —— day of ——, in the year one thousand eight hundred and fifty—, personally came and appeared before me, R. B. Notary Public, duly commissioned and sworn, residing in L—, in the county of L—, in the State of —, A. B. master of the ship or vessel, the Tom, belonging to the port of ——, who being sworn, did declare and depose as follows: that is to say, that this appearer did, on or about the —— day of —— last, receive on board the said vessel, at the port of L—, in the —— of ——, [*here describe the goods*] all of which were shipped on board her there by E. F. addressed to C. D. at L— aforesaid; and this appearer duly signed bills of lading as customary, expressing the said goods to be deliverable to the said C. D. at L—, he or they paying freight for the same, with primage accustomed. That this appearer proceeded with the said goods on board the said vessel direct to L— aforesaid, where she arrived on the —— day of —— instant, and on the —— day of

—— instant, when the said vessel had been reported, and had got into a proper berth for discharging, this appearer gave notice to the said C. D. to whom the said goods were addressed, that this appearer was ready to deliver the said goods; but from that time up to the date and making of these presents, neither the said C. D. nor any other person on his behalf, hath received or discharged, or offered to receive or discharge the said goods from the said vessel, or paid or offered to pay the freight and primage thereof, although this appearer is willing and desirous to deliver the said goods; and notwithstanding this appearer hath several times applied to, and requested the said C. D. to have the said goods discharged from the said vessel, and received by him, yet he still delays and neglects so to do; and that such delay and neglect are unreasonable, and injurious to the interests of the owners and master of the said vessel. Wherefore, the said appearer, A. B. on behalf of the owners of the said vessel, and on behalf of himself, as master, doth protest, and I, the said notary, at his request, do also protest against the said C. D. and against all and every other person or persons whomsoever responsible, or whom these presents do or may concern, and holding him or them responsible for all demurrage, loss, damage, wages, and expenses incurred, owing, or sustained, or to be incurred or sustained, in consequence of such unreasonable delay, detention, and circumstances as aforesaid. A. B.

All which matters and things were declared, alleged, and affirmed before me the said Notary. *In testimony whereof*, I have hereunto set my hand and affixed my official seal.

(Seal.) R. B. *Notary Public.*

FORM OF BILL OF LADING.

SHIPPED in good order and condition, by A. B. on board the ——, called the ——, whereof C. D is master for this present voyage, now lying in the port of ——, and bound for ——: To say: twenty packages, being marked and numbered as in the margin, and are to be delivered in the like good order and condition, at the port of ——, (the act of God, enemies, fire, machinery, boiler, steam and all and every other dangers and accidents of seas, lakes, rivers, and steam navigation of whatever nature and kind soever excepted) unto R. H. or his assigns, he or they paying freight for the same, the sum of ——.

In witness whereof the Master or Clerk of said ——, hath affirmed to —— Bills of Lading, all of this tenor and date; one of which being accomplished, the others to stand void. Dated at ——, the 1st day of July, 185—. C. D.

A master can demand to see the contents of a case, &c., if he suspects that there is any damage, or that it contains any unlawful or dangerous article, as gunpowder, &c.; and to prevent dispute, it is usual to write upon the bills of lading such words as will show that the captain, or person signing them, has no other knowledge of what the goods are, than that which is obtained from their external appearance. As

(If Iron, &c.)
Weight unknown to

(If bales of Hemp, Flax, and other packages, &c.)
Contents unknown to, or *Weight and contents unknown to*

(For a number of pieces in bales of manufactured goods.)
Number of pieces and contents unknown to

(For liquids.)
Contents unknown to, and *Not accountable for leakage.*

(If liquids in bottles.)
Contents unknown to, and *Not accountable for leakage and breakage.*

(If the number of gallons are expressed in the bill.)
Number of gallons and contents unknown to, and *Not accountable for leakage.*

THOMAS SMITH.

TABLE FOR CALCULATING SEAMEN'S & BOATMEN'S WAGES, FROM 5 TO 17 DOLLARS PER MONTH.

No. of Days.	SEAMEN'S WAGES BY THE DAY AND MONTH.												
	mo. $ 5·00	mo. $ 6·00	mo. $ 7·00	mo. $ 8·00	mo. $ 9·00	mo. $ 10·00	mo. $ 11·00	mo. $ 12·00	mo. $ 13·00	mo. $ 14.00	mo. $ 15·00	mo. $ 16·00	mo. $ 17 00
1	0·17	0·20	0·23	0·27	0·30	0 33	0·37	0·40	0·43	0·47	0·50	0·53	0·57
2	0·33	0·40	0·47	0·53	0·60	0·67	0·73	0·80	0·87	0·93	1·00	1·07	1·13
3	0·50	0·60	0·70	0·80	0·90	1·00	1·10	1·20	1·30	1·40	1·50	1·60	1·70
4	0·67	0·80	0·93	1·07	1·20	1·33	1·47	1·60	1·73	1·87	2·00	2·13	2·27
5	0·83	1·00	1·17	1·33	1·50	1·67	1·83	2 00	2·17	2·33	2·50	2·67	2·83
6	1·00	1·20	1·40	1·60	1·80	2·00	2·20	2·40	2·60	2·80	3·00	3·20	3·40
7	1·17	1·40	1·63	1·87	2·10	2 33	2·57	2·80	3·03	3·27	3·50	3·73	3·97
8	1·33	1·60	1·87	2·13	2·40	2·67	2·93	3·20	3·47	3·73	4·00	4·27	4·53
9	1·50	1·80	2·10	2·40	2·70	3·00	3·30	3·60	3·90	4·20	4·50	4 80	5·10
10	1·67	2·00	2·33	2·67	3·00	3·33	3·67	4·00	4·33	4·67	5·00	5·33	5·67
11	1 83	2·20	2·57	2·93	3 30	3·67	4.03	4·40	4·77	5·13	5·50	5·87	6·23
12	2·00	2·40	2·80	3·20	3·60	4·00	4·40	4·80	5 20	5·60	6·00	6·40	6·80
13	2·17	2·60	3·03	3·47	3·90	4·33	4·77	5·20	5 63	6·07	6·50	6·93	7·37
14	2·33	2 80	3·27	3·73	4·20	4·67	5·13	5 60	6·07	6·53	7·00	7·47	7·93
15	2·50	3·00	3·50	4·00	4·50	5·00	5·50	6·00	6 50	7·00	7·50	8·00	8·50
16	2·67	3·20	3·73	4·27	4 80	5·33	5·87	6·40	6·93	7·47	8·00	8·53	9·07
17	2·83	3·40	3·97	4·53	5·10	5·67	6·23	6·80	7·37	7·93	8 50	9·07	9·63
18	3.00	3·60	4·20	4·80	5·40	6·00	6·60	7·20	7·80	8·40	9 00	9 60	10·20
19	3·17	3·80	4·43	5·07	5·70	6·33	6·97	7·60	8·23	8·87	9·50	10·13	10·77
20	3 33	4·00	4·67	5·33	6·00	6·67	7·33	8·00	8·67	9 33	10·00	10·67	11·33
21	3 50	4 20	4·90	5 60	6·30	7·00	7·70	8·40	9·10	9·80	10·50	11·20	11·90
22	3·67	4·40	5·13	5·87	6·60	7·33	8·07	8·80	9·53	10·27	11·00	11·73	12·47
23	3 83	4·60	5·37	6·13	6·90	7·67	8·43	9·20	9 97	10·73	11·50	12·27	13·03
24	4·00	4·80	5·60	6·40	7·20	8·00	8 80	9·60	10 40	11 20	12 00	12·80	13·60
25	4·17	5·00	5·83	6·67	7·50	8 33	9·17	10·00	10 83	11 67	12 50	13·33	14·17
26	4·33	5·20	6·07	6 93	7·80	8·67	9·53	10 40	11·27	12·13	13·00	13·87	14·73
27	4·50	5·40	6 30	7·20	8·10	9 00	9·90	10·80	11·70	12·60	13·50	14·40	15·30
28	4·67	5·60	6·53	7·47	8·40	9·33	10·27	11·20	12·13	13·07	14·00	14·93	15·87
29	4·83	5·80	6·77	7·73	8·70	9·67	10·63	11·60	12·57	13 53	14·50	15·47	16·43
30	5·00	6·00	7 00	8·00	9·00	10 00	11·00	12·00	13·00	14·00	15 00	16·00	17·00
¼	0·04	0 05	0·06	0·07	0·08	0·08	0·09	0·10	0·11	0·12	0·13	0·13	0·14
½	0 08	0·10	0·12	0·13	0·15	0·17	0·18	0·20	0·22	0·23	0·25	0·27	0·28
¾	0·12	0·15	0·17	0.20	0·23	0 25	0·27	0·30	0·32	0 35	0·38	0·40	0·42

N. B. It is the practice in business, in casting accounts, whenever there is a half cent, to take one cent; for a fraction less than half cent, nothing is taken.

Seamen are entitled to demand and receive from the master, one third part of the wages which shall be due them, at every port where the vessel unlades and delivers her cargo before the voyage is ended; unless the contrary is stipulated in the Shipping Articles.

SEAMEN'S AND BOATMEN'S WAGES, — CONTINUED.

No. of Days.	SEAMEN'S WAGES BY THE DAY AND MONTH.												
	mo. $ 18·00	mo. $ 19·00	mo. $ 20·00	mo. $ 21·00	mo. $ 22 00	mo. $ 23 00	mo. $ 24·00	mo. $ 25·00	mo. $ 26·00	mo. $ 27·00	mo. $ 28·00	mo. $ 29·00	mo. $ 30·00
1	0·60	0·63	0·67	0·70	0·73	0·77	0·80	0·83	0·87	0·90	0·93	0·97	1·00
2	1·20	1·27	1·33	1·40	1·47	1·53	1·60	1·67	1·73	1·80	1·87	1·93	2·00
3	1·80	1·90	2·00	2·10	2·20	2·30	2·40	2·50	2.60	2·70	2·80	2·90	3·00
4	2·40	2·53	2·67	2·80	2·93	3·07	3·20	3·33	3·47	3·60	3·73	3·87	4·00
5	3·00	3·17	3·33	3·50	3·67	3·83	4·00	4·17	4·33	4·50	4·67	4·83	5·00
6	3·60	3·80	4·00	4·20	4·40	4·60	4·80	5·00	5·20	5·40	5·60	5·80	6·00
7	4·20	4·43	4 67	4·90	5·13	5·37	5·60	5·83	6·07	6·30	6·53	6·77	7·00
8	4·80	5·07	5·33	5·60	5·87	6·13	6·40	6·67	6·93	7·20	7·47	7·73	8·00
9	5·40	5·70	6·00	6·30	6·60	6·90	7·20	7·50	7·80	8·10	8·40	8·70	9·00
10	6·00	6·33	6·67	7·00	7·33	7·67	8·00	8·33	8·67	9·00	9·33	9·67	10·00
11	6·60	6·97	7·33	7·70	8·07	8·43	8·80	9·17	9·53	9·90	10 27	10·63	11·00
12	7·20	7·60	8·00	8·40	8·80	9·20	9 60	10·00	10·40	10·80	11·20	11·60	12·00
13	7·80	8·23	8·67	9·10	9·53	9·97	10·40	10·83	11·27	11·70	12·13	12·57	13·00
14	8·40	8·87	9·33	9·80	10·27	10 73	11·20	11·67	12·13	12·60	13·07	13·53	14·00
15	9·00	9·50	10·00	10·50	11·00	11·50	12·00	12·50	13·00	13·50	14·00	14·50	15·00
16	9·60	10·13	10·67	11·20	11 73	12·27	12 80	13·33	13·87	14·40	14·93	15·47	16·00
17	10·20	10·77	11·33	11·90	12·47	13·03	13·60	14·17	14·73	15·30	15·87	16·43	17·00
18	10·80	11·40	12·00	12·60	13·20	13·80	14·40	15·00	15 60	16 20	16·80	17·40	18·00
19	11·40	12·03	12·67	13·30	13·93	14·57	15·20	15·83	16·47	17·10	17·73	18·37	19·00
20	12 00	12·67	13.33	14·00	14·67	15·33	16·00	16·67	17·33	18·00	18·67	19·33	20·00
21	12·60	13·30	14·00	14·70	15·40	16·10	16·80	17·50	18·20	18·90	19 60	20.30	21·00
22	13·20	13·93	14·67	15·40	16·13	16·87	17·60	18 33	19·07	19·80	20 53	21·27	22·00
23	13·80	14·57	15·33	16·10	16·87	17·63	18·40	19·17	19·93	20·70	21·47	22·23	23·00
24	14·40	15·20	16·00	16·80	17·60	18·40	19·20	20·00	20·80	21·60	22 40	23·20	24·00
25	15 00	15·83	16·67	17·50	18·33	19·17	20·00	20·83	21·67	22·50	23·33	24·17	25·00
26	15·60	16·47	17·33	18·20	19·07	19·93	20·80	21·67	22·53	23·40	24·27	25·13	26·00
27	16·20	17·10	18·00	18·90	19·80	20·70	21·60	22·50	23·40	24·30	25·20	26·10	27·00
28	16·80	17·73	18·67	19·60	20·53	21·47	22·40	23·33	24·27	25·20	26·13	27·07	28·00
29	17·40	18·37	19 33	20 30	21·27	22·23	23·20	24·17	25·13	26·10	27·07	28·03	29·00
30	18·00	19·00	20·00	21·00	22·00	23 00	24·00	25·00	26·00	27·00	28·00	29·00	30·00
¼	0 15	0·16	0·17	0·18	0·18	0·19	0·20	0·21	0 22	0·23	0 23	0 24	0·25
½	0·30	0·32	0 33	0·35	0·37	0·38	0·40	0 42	0·43	0·45	0·47	0·48	0·50
¾	0·45	0·47	0·50	0·53	0·55	0·57	0·60	0·62	0·65	0·68	0·70	0 72	0 75

If a Seaman's Wages are not paid within ten days after the voyage is ended, he may libel the vessel. But if he is bound to remain and assist in discharging the cargo, then he cannot attach the vessel until ten days after the cargo is discharged, unless she is going to sail before that time. If the sailor is discharged at the end of the voyage, and before the cargo is unloaded, then he may proceed immediately against the vessel.

Warehouse Bond.

KNOW ALL MEN BY THESE PRESENTS, That we, A. B. and C. D., are held and firmly bound unto the United States of America in the sum of —— dollars, to be paid to the United States: for the payment whereof we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents, sealed with our seals.

Dated this —— day of ——, one thousand eight hundred and ——.

The condition of this obligation is such, That if the above bounden A. B. and C. D., or either of them, or either of their heirs, executors or administrators, shall, on or before the expiration of three years, to be computed from the date of the importation of the goods, wares and merchandise, hereafter mentioned, well and truly pay or cause to be paid unto the Collector of the customs for the port of —— for the time being, the sum of —— dollars, or the amount of duties to be ascertained as due and owing on goods, wares, and merchandise imported by —— in the —— master, from ——, consisting of —— or shall in the mode prescribed by law on or before the expiration of the three years aforesaid withdraw the said goods from the Public Stores where they may be deposited at the port of —— then this obligation is to be void, otherwise to remain in full force and virtue.

A. B. [L. S.]
C. D. [L. S.]

Sealed and delivered in presence of

Custom House Power of Attorney.

[Goods consigned to persons not residing in the port where the goods arrive, must be entered by the attorney of the Consignee, duly appointed]

KNOW ALL MEN BY THESE PRESENTS, That we, John Doe and Richard Roe, composing and trading under the firm of John Doe & Co., of the city of ——, state of ——, merchants, do make, constitute and appoint John K. Stimson, Geo. A. Stimson, and Wm. H. Pillow doing business in Boston, under the style of John K. Stimson and Company, severally or separately, true and lawful attorneys for us and in our name, place and stead, to enter in due form of law, at any Custom House in the United States of America, all goods, wares and merchandise, which have been imported, or may hereafter be imported, by us, or which have arrived, consigned, or may hereafter arrive, consigned to us, or in which we are or may be interested or concerned.

And for us and in our name, place and stead to sign, seal, execute and deliver, all and every bond and bonds which may be required to secure the duties thereon, or for the transportation or exportation of the same; or any other bond or bonds required by the revenue laws or the regulations of the Treasury department of the United States, or the Collector of the Customs of the District of Boston, relative to any such Merchandise; or which may be necessary to obtain the debenture and debentures, upon such of the said goods, wares and merchandise, as may be exported for us or on our account. To have, take, and receive all debenture certificates to be issued thereupon for us, and in our name, place and stead to endorse, assign and transfer the same: or have, take, and receive the moneys due and to grow due thereon: And generally, as our Attorneys, to do, transact, and perform all Custom House business, of what kind soever, in which we are or may be interested or concerned, as fully and effectually to all intents and purposes, as we if present there in person, could do; also to set our seal to any instrument which may be necessary in the premises, and the same to acknowledge for us to be our act and deed; and generally to do and perform all things relating to the premises, which we could law-

fully do, if personally present, and as fully and effectually, to every intent and purpose, although the same should seem to require more precise or special authority than is herein expressed. And especially authorizing and empowering our said Attorneys for us and in our name, place and stead to sign, seal, execute and deliver all Bonds of Indemnity and other specialties, and also all other documents which may be necessary for effecting the premises; hereby ratifying all and whatsoever our said Attorneys may lawfully do by virtue hereof.

And it is hereby declared and understood, that this power shall be and remain in full force and virtue until revoked by written notice given to the Collector.

In witness whereof, we have hereunto set our hands and seals this —— day of ——, 185—.

JOHN DOE, [L. S.]
RICHARD ROE, [L. S.]

Signed, sealed and delivered in presence of
A. B.
C. D.

NOTE.—In all cases where the above Power of Attorney is given, the names of all the persons constituting a firm must be written in full.

State of ——, } *ss.*
Connty of ——, }

Be it known, that on the —— day of ——, 185—, personally appeared *John Doe* and *Richard Roe*, and acknowledged before me the foregoing Power of Attorney to be their free act and deed.

In testimony whereof, I have hereunto set my hand and seal of office the —— day of ——. 185—.

J. K., *Notary Public.*

Bottomry Bond — usual form.

KNOW ALL MEN BY THESE PRESENTS, That I, A. B., master of the ship or vessel, called the *Eagle* of B., belonging to C. D., in N. V., am held and firmly bound unto E. F. of G. in the county of G. in the state of M., one of the U. States of America, merchant, in the sum of —— lawful British money, to be paid to the said E. F., or his certain attorney or attorneys, executors, administrators or assigns; for which payment well and truly to be made I bind myself, my heirs, executors, and administrators, and also the said ship or vessel, her tackle, apparel, and furniture, and the freight to be earned by her on the voyage after mentioned, firmly by these presents, sealed with my seal.

Dated this —— day of ——, one thousand eight hundred and ——.

Whereas, the said ship or vessel is lately arrived at G. from N. V., and having on her voyage to the port of G. sustained damage [*here state the damage and circumstances giving rise to the occasion for taking up the money, with a short statement of the repairs and equipments, which have been required to enable the vessel to proceed on her voyage*] and she is now bound for and about to return to N. V. aforesaid; and the said A. B. in order to be enabled to pay for the necessary repairs of said vessel, and the necessary and lawful disbursements and expenses thereof, and to enable him to proceed to sea with her on the said intended voyage, hath requested the said E. F. to lend and advance the sum of —— for the aforesaid purposes, which the said E. F. hath accordingly done on the hazard and adventure of the said vessel on her said intended voyage from G. to N. V. aforesaid, and the said master, A. B., hath taken up the same on the hazard and adventure aforesaid.

Now the condition of the above obligation is such, That if the said ship

or vessel do and shall with all convenient and reasonable speed, sail from the port of G. aforesaid, on the said intended voyage to N. V., and that without deviation (the perils, damages, accidents, and casualties of the seas and navigation excepted), and if the above bound A. B. his heirs, executors or administrators, or the owners of the said vessel do and shall within —— days after the said vessel shall arrive at N. V. aforesaid, well and truly pay or cause to be paid unto the said E. F., his agent, attorney, executors, administrators, or assigns, the said sum of ——, lawful sterling money, together with —— pounds sterling per centum, bottomry premium thereon; or if on the said voyage the said ship or vessel shall unavoidably be utterly lost, cast away, or destroyed, in consequence of fire, enemies, men of war, pirates, storms, or other the unavoidable perils, dangers, accidents, or casualties of the seas and navigation, to be sufficiently shown or proved by the said A. B., his executors or administrators, or by the owners of the said ship or vessel, their executors, or administrators: then the above obligation shall be void. A. B. for self and C. D. [L. S.]

Signed, sealed and delivered in presence of

NOTE.— The owner is not liable, unless he has, by previous deed, under seal, given the master authority to add his security.

Respondentia Bond.

[From Abbott on Shipping, 4th Lond. Ed.]

KNOW ALL MEN BY THESE PRESENTS, That, we, A. B. commander of the ship *Belvidere* and C. D., of ——, are held and firmly bound to E. F., of ——, merchant, in the sum of —— lawful money of the ——, to be paid to the said E. F., or to his certain attorney, executors, administrators, or assigns, to which payment we bind ourselves jointly and separately, our heirs, executors and administrators, firmly by these presents, sealed with our seals.

Dated this —— day of ——, one thousand eight hundred and ——.

Whereas, the above-named E. F. has, on the day of the date above written, advanced and loaned unto the said A. B. and C. D., the sum of —— upon the goods, merchandises, and effects laden, and to be laden on board the good ship or vessel called the *Belvidere*, of the burden of 987 tons or thereabouts, now riding at anchor in the harbor of ——, outward bound to China, and whereof A. B. is commander, by his acceptance of a bill of exchange to that amount at *four* months' date, for the account of them, the said A. B. and C. D.

Now the condition of this obligation is such, That if the said ship or vessel do and shall, with all convenient speed, proceed and sail from and out of the said port of ——, on a voyage to any port or place, ports or places, in the East Indies, China, Persia, or elsewhere, beyond the Cape of Good Hope, and from thence do and shall sail, return, and come back into the said port of ——, at or before the end of thirty-six calendar months, to be accounted from the day of the date above written, and there to end her said intended voyage, (the dangers and casualties of the seas excepted); and if the said A. B. and C. D., or either of them, their, or either of their heirs, executors or administrators, do and shall, within thirty days next, after the said ship or vessel shall be arrived at her moorings in the said port of ——, from her said intended voyage, or at or upon the end and expiration of the said thirty-six calendar months, to be accounted as aforesaid (which of the said times shall first and next happen), well and truly pay or cause to be paid unto the said E. F., his executors, administrators or assigns, the full sum of ——, together with —— per cal

endar month for each and every calendar month, and so proportionally for a greater or a lesser time than a calendar month, for all such time and so many calendar months as shall be elapsed and run out of the said thirty-six calendar months, over and above twenty calendar months, to be accounted from the day of the date above written; or if in the said voyage, and within the said thirty-six calendar months to be accounted as aforesaid, an utter loss of the said ship or vessel by fire, enemies, men of war, or any other casualties shall unavoidably happen, and the said A. B and C. D., their heirs, executors, or administrators, do and shall within six calendar months next after such loss well and truly account for (upon oath if required) and pay unto the said E. F., his executors, administrators, or assigns, a just and proportionable average on all the goods and effects of the said A. B. carried from ——, on board of the said ship or vessel, and the net proceeds thereof, and on all other goods and effects which the said A. B. shall acquire during the said voyage for or by reason of such goods, merchandises and effects, and which shall not be unavoidably lost, then the above written obligation to be void,

Signed, sealed and delivered in presence of A. B. [L. s.]
C. D. [L. s.]

Agreement of Charter Party outwards.

It is this day mutually agreed between A. B., Master of the good Ship or Vessel called the *Sultan, A* 1, *and coppered*, of the burthen of *nine hundred* tons, register measurement, or thereabouts, now at ——, and Messrs. C. & Co , of ——, Merchants. That the said Ship being tight, staunch, and strong, and in every way fitted for the Voyage, shall *forthwith proceed to* ——, *and then load from the Charterer's Agents a full and complete Cargo of Cotton*, which the said Merchants bind themselves to ship, not exceeding what she can reasonably stow and carry over and above her Tackle, Apparel, Provisions, and Furniture; and being so loaded, shall therewith proceed to ——, or so near thereunto as she may safely get.* and deliver the same on being paid Freight *at and after the rate of —— shillings per Ton of* 20 *cwt. with —— per cent. primage thereon in sterling*. (The Act of God, Enemies, Fire, and all and every other Dangers and Accidents of the Seas, Rivers, and Navigation, of whatever nature and kind soever, during the said Voyage, always excepted.) The Freight to be paid on unloading, and right delivery of the Cargo, *in Cash*.

Thirty running Days are to be allowed the said Merchant (if the Ship is not sooner despatched) for loading the said Ship at ——, *and for discharging at* ——, *to commence on the Vessel's arrival at —— and being ready to load, cease when loaded, recommence on her arrival at —— and being ready to discharge, and cease when finally discharged, and —— days* on Demurrage, over and above the said lying days at —— pounds per day. Penalty for non-performance of this Agreement —— dollars.

Cargo to be sent to and taken from alongside of the Vessel free of any expense to the Ship.

The Vessel to be consigned to Charterers' Agents at ports of loading and discharge.

Witness our hands and seals this —— day of ——, A. D. 185—.

Executed in presence of *Signatures and Seals.*

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* This means that she should get within the ambit of the port, though she may not be able to enter it.

Agreement of Steamboat Charter Party.

It is mutually agreed between A. B. of the city of ——, owner of the good *steamboat Sultan*, of the burthen of *four hundred* tons, or thereabouts, register measurement, now lying in the *port of* ——, (*whereof E. F., is at present master,*) and C. D., merchant, of the said *city*. That the said A. B., for the consideration hereinafter mentioned, doth let and charter the aforesaid steamboat, with the appurtenances, for a voyage from C. to B., (the Act of God, enemies, fire, machinery, boilers, steam, and all other dangers and accidents of seas, rivers, lakes, and steam navigation excepted); and the said A. B. covenants with the said C. D. in manner following, that is to say: that the said *steamboat Sultan*, in and during the *voyage* aforesaid, shall be kept tight, staunch, well fitted, tackled, and provided with every requisite necessary for such a vessel and such a voyage; and the said A. B. doth further engage to take and receive on board said steamboat, all such lawful goods and merchandise as the said C. D. or his agents may think proper to ship, not exceeding what she can reasonably stow and carry, over and above her tackle, provisions, fuel, furniture and machinery; and being so loaded shall therewith proceed to B., and there be discharged.

In consideration whereof, the said C. D. agrees to pay the said A. B., the sum of —— dollars in full for the freight or hire of said *steamboat* and her appurtenances, one-half to be paid in *cash* on unloading and right delivery of the cargo, and the remainder by an approved bill at three months following.

Penalty for non-performance of this Agreement, —— dollars.

In witness whereof, the said parties have hereunto set their hands and seals the —— day of ——, A. D. 185—.

Executed in presence of *Signatures and Seals.*

Bill of Sale of Registered Ship or Vessel.

KNOW ALL MEN BY THESE PRESENTS, That I, A. B., of G. owner of the ship or vessel, called the *Atlantic*, of the burthen of *eight hundred* tons or thereabouts, for and in consideration of the sum of —— dollars, lawful money of the United States, to me in hand paid, at or before the sealing and delivery of these presents, by C. D., of the said place, the receipt whereof I do hereby acknowledge, and am therewith fully satisfied, contented and paid, have bargained and sold, and by these presents do bargain and sell, unto the said C. D., his executors, administrators and assigns, all the hull or body of the said ship, or vessel, together with the masts, bowsprit, sails, boats, anchors, cables, and all other necessaries thereunto belonging; the certificate of the registry of which said ship, or vessel, is as follows, to wit: (*copy certificate of registry:*) To have and to hold the said ship, or vessel, and appurtenances thereunto belonging, unto the said C. D., his executors, administrators, and assigns, to his and their sole and only proper use, benefit, and behoof, forever. And I do, for myself, my heirs, executors and administrators, covenant and agree to and with the said C. D., his executors, administrators and assigns, to warrant and defend the said ship, or vessel, and all the before mentioned appurtenances, against all and every person and persons whomsoever.

In testimony whereof, the said A. B. has, &c. A. B. [L. S.]

Bill of Sale of an Enrolled Vessel.

The form for this should be similar to the preceding one, excepting that the certificate of enrolment should be inserted in place of the certificate of registry.

If a vessel be at sea, a bill of sale of her is good, *prima facie*, against the claims of all persons. And it is only subject to be defeated by the negligence of the vendee in taking possession of her after her return —S *M. R.* 287.

No Bill of Sale of a vessel or part thereof, is valid, except as against grantors, unless such bill of sale, mortgage, hypothecation, or conveyance be recorded in the office of the collector of the customs where such vessel is registered or enrolled.—Bottomry however does not lose its priority.—Collectors must record all such bills of sale, &c.; and keep an Index for the convenience of those concerned, and for their inspection during office hours; collectors shall furnish certified copies of such records, on the receipt of fifty cents. The oath of ownership must set forth the part of each vessel belonging to each owner and the same must be inserted in the register or enrolment.—*Law of* 1850.

All complaints in writing to Consuls or Commercial Agents, that a vessel is unseaworthy, shall be signed by the first, or second and third officers, and a majority of the crew, before the consul or commercial agent shall be authorized to notice such complaint, or proceed to appoint inspectors.

Registry Bond.

[Ships, or vessels, if not registered, lose the privileges and benefit of ships of the United States, and are deemed foreign vessels; and, if found in the coasting trade, or fisheries, without being registered or licensed, with domestic goods on board, must pay foreign tonnage duties, and if with foreign goods on board are liable to forfeiture.]

KNOW ALL MEN BY THESE PRESENTS, That we, A. B. and C. D. are held and stand firmly bound to the United States of America, in the full sum of —— dollars; to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents, sealed with our seals.

Dated this —— day of ——, one thousand eight hundred and ——.

The condition of this obligation is, That whereas, L. L., Collector for the District of ——, has issued and granted a Certificate of Registry in the manner prescribed by the Act entitled "*An Act concerning the Registering and Recording of ships or vessels,*" for the —— called the ——, of the burthen of —— tons, whereof E. F. is at present master, which Certificate is dated on this day, and numbered ——.

Now, therefore, if the said Certificate of Registry shall be solely used for the said vessel for which it had been granted, and shall not be sold, lent or otherwise disposed of to any person or persons whomsoever; and in case the said vessel shall be lost, or taken by an enemy, burnt or broken up, or shall otherwise be prevented from returning to the port to which she belongs, if the said Certificate (if preserved) shall, within eight days after the arrival of the master or person having the charge or command of the said vessel within any District of the United States, be delivered up to the Collector of such District; or if any foreigner or any person or persons for the use and benefit of such foreigner, shall purchase, or otherwise become entitled to, the whole or any part or share of or interest in the said vessel, the same being within a District of the United States, if the Certificate shall, within seven days after such purchase, change or transfer of property be delivered up to the Collector of said District; or if such purchase, change or transfer of property shall happen when the said vessel shall be at any foreign port or place, or at sea, if the master or person having the charge or command thereof, shall within eight days after his arrival within any District of the United States, deliver up the said Certificate to the Collector of such District; then the said obligation shall be void, and of no effect; but otherwise shall remain in full force and virtue.

Signed, sealed and delivered in presence of *Signatures and Seals.*

LAWS OF THE SEA.

THE

RIGHTS OF SEAMEN,

COASTER'S & FISHERMAN'S GUIDE,

AND

MASTER'S AND MATE'S MANUAL,

INCLUDING

THE RIGHTS, DUTIES, AND LIABILITIES OF SHIPMASTERS.
THE RIGHTS, DUTIES, AND LIABILITIES OF MATES.
THE RIGHTS, DUTIES, AND LIABILITIES OF COASTERS.
THE RIGHTS, DUTIES, AND LIABILITIES OF FISHERMEN.
THE RIGHTS, DUTIES, AND LIABILITIES OF SEAMEN.
THE RIGHTS AND PRIVILEGES OF PASSENGERS, LAW OF 1855.
THE U. STATES NAVY RATION SCALE; WITH SUBSTITUTES.
SCALE FOR VICTUALLING MERCHANT VESSELS FOR 1 MONTH.
TABLES FOR CALCULATING SEAMEN'S WAGES FOR 1 MONTH.

BOSTON:
PUBLISHED BY ISAAC R. BUTTS,
CORNER OF WASHINGTON AND SCHOOL STREETS.
1857.

Entered, according to Act of Congress, in the year 1848, by I. R. Butts, in the Clerk's Office of the District Court of the District of Massachusetts.

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SEAMAN'S ASSISTANT.

CHAPTER I.

HIRING OF SEAMEN.

Hiring of Seamen.—When Shipping Articles are required by Law.—What the Shipping Articles must contain.—Rights of Seamen who do not sign the Shipping Articles required by Law.—What the Shipping Articles usually contain.—Of what the Shipping Articles are conclusive evidence.—Unusual Stipulations in the Shipping Articles when Void.—On what Voyages the Master must take with him a Copy of the Shipping Articles and a List of the Crew.—The Shipping Articles and List of the Crew taken to sea by the Master, must not be interlined, &c.—Shipment of Seamen in Foreign Ports.

Hiring of Seamen.—Seamen are usually hired for a particular voyage, or for a term of time, at a certain sum per month. The terms of the agreement are ordinarily in writing, and are called the *Shipping Articles.* It is much better to have the agreement in writing, and on most voyages the master is required to have all the crew sign shipping articles before he sails. It is immaterial whether all the crew sign the same articles, or each signs a separate contract; though it is usual for master, officers and crew, to sign the same paper.

When Shipping Articles are required by Law.—In order to prevent the mischiefs that would frequently arise from the want of proper proof of the precise terms, upon which seamen engage to perform their service in merchant ships, it has been provided by an Act of Congress, that "Every master or commander of any ship or vessel bound from a port in the United States to any foreign port, or of any ship or vessel of the burthen of fifty tons or upwards, bound from

a port in one State to a port in any other than an adjoining State, shall, before he proceeds on such voyage, make an agreement in writing or in print, with every seaman on board (except such as shall be apprentice or servants to himself or the owners) declaring the voyage or voyages, term or terms of time, for which such seamen shall be shipped."[1] This written or printed contract is known to sailors as the *Shipping Articles.*

This Act provides for two classes of voyages: *first*, for all foreign voyages commencing at a port in the United States; it has, however, been held that voyages commencing at a foreign port to the United States do not come within this provision;[2] *secondly*, for all coasting voyages from a port in one State to a port in any other than an adjoining State; this includes a general coasting and trading voyage, in which the vessel is trading at ports in different States.[3]

What the Shipping Articles must contain.—This Act also provides that the shipping articles shall declare the voyage, or term of time, for which each seaman ships.

Where the vessel is employed on what is called a trading voyage, or is in search of freight, so that her destination cannot be specifically known, it is usual and undoubtedly proper for the shipping articles to declare the term of time for which each seaman is shipped.[4]

When the seaman ships for a voyage, the articles must give a fair and intelligible description of the voyage, so that he may know the exact voyage for which he is shipping. The articles, in such cases, *must declare the ports at which the voyage is to commence and terminate.*[5]

It is hardly possible, however, to state the precise degree of accuracy required by law in the description of the voyage. The rule is, that the voyage must be so described, that the seamen may know for what service they are shipping; and if it appears that the seaman fully understood what voyage was intended by the articles when he signed them, it would seem that that is sufficient, though the description of the voyage is a little indefinite.[6] It is not always necessary to insert the name of every port to which the vessel may proceed in the course of the voyage, provi-

(1) Act 1790, ch. 56, sec. 1. — (2) 1 Pet. Adm. 223. — (3) Ware's R. 437. — (4) Hall's Am. Law Jour. 209. — (5) Ibid; 1 Gilpin's R. 83, 149, 219. — (6) Ibid. 83.

ded there is some equivalent specification, such as to port or ports in the West Indies, or to the Mediterranean, or the like.[1]

Loose and general descriptions of a particular voyage are not, however, sufficient; and where, after a description of a particular voyage, words are added giving to the master a general power to proceed "*elsewhere*," such words are void for uncertainty, or, at least, only authorize the master to pursue such a course as may be necessary to accomplish the particular voyage described, and not another voyage.[2]

[The subject will be further considered, when the cases which justify a seaman in deserting are examined. See page 27.]

Rights of Seamen who do not sign the Shipping Articles required by Law.—If a master takes to sea, on one of the voyages referred to in this Act of Congress, any seaman who has not signed suitable shipping articles, that is, articles containing a fair and intelligible description of the voyage, or the term of time for which he shipped, then such seaman may leave the ship at any time during the voyage, and demand the highest rate of wages paid to any seaman shipped for the voyage, or the sum agreed to be given him at his shipment.[3]

The master also forfeits twenty dollars for every such seaman, one half to the use of the person prosecuting for the same, the other half to the use of the United States.[4]

The seaman, in such cases, is not bound by the regulations, nor subject to the penalties and forfeitures, which are contained in this and other Acts of Congress, which will be stated hereafter.[5] He is, however, subject to the general maritime law, so long as he remains on board the vessel, and any negligence or misconduct during the time he actually remains in the ship's service, would undoubtedly be punished by a deduction from his wages, or a forfeiture of them, or other punishment, according to the nature of the offence.

What the Shipping Articles usually contain.—They usually contain a description of the voyage, the capacity in which each seaman ships, the rate of his wages, and the time when he is to render himself on board.

Of what the Shipping Articles are conclusive evidence.—

(1) Hall's Am. Law Jour. 209. — (2) Ibid. — (3) Act 1840, ch. 23, sec. 10. —(4) Act 1790, ch. 56, sec. 1. — (5) Ibid.

The articles are conclusive evidence of the voyage for which the seamen ship. Seamen may, however, show that the articles have been altered since they signed them.[1]

They are also conclusive evidence of the wages which are to be paid to the seamen, and they will not be allowed to set up a different rate of wages from that specified by the articles. Of course, if the articles have been altered, that may be shown. It would seem, that in respect to the wages of the master and his apprentice, evidence may be brought to prove the articles are incorrect.[2]

Unusual Stipulations in the Shipping Articles when void. Every alteration from the terms of the common shipping articles is rigidly inspected by the courts, to ascertain whether such alteration is injurious to the rights of the seamen. And whenever any stipulation is found in the shipping articles, which injures or impairs the general rights and privileges of seamen, the courts will hold such stipulation void, as founded upon imposition or an unfair advantage taken of their necessities and improvidence, unless two things concur; first, that the nature and operation of the clause is fully and fairly explained to the seamen; and secondly, that increased wages are allowed them, sufficient to compensate them for the new restrictions and risks imposed upon them thereby.[3] [The cases where the courts have rejected new and unusual stipulations in the shipping articles, will be referred to under their proper titles.]

On what Voyages the Master must take with him a Copy of the Shipping Articles and a List of the Crew.—The owners of any vessel bound on a foreign voyage, must obtain from the collector of the port from which the clearance is made, a true and certified copy of the shipping articles, containing the names of the crew, which shall be written in a uniform hand, without erasures or interlineations. This copy must be taken to sea with the vessel.[4]

The master must also, before sailing, deliver to the collector of the port a list, containing the names, places of birth, and residence, and a description of the persons who compose his ship's company, to which the oath or affirmation of the captain must be annexed, that the facts stated in the list are true so far as he can ascertain them; and he must then obtain from the collector a fair copy of this list

(1) 1 Hagg. 182. —— (2) 14 Johns. 260; 3 Mason, 161. —— (3) 2 Mason, 541; 3 Sumner, 443. —— (4) Act 1840, ch. 48, sec. 2.

in one uniform hand-writing, without erasure or interlineation, and carry it to sea with him.[1]

These documents, which shall be deemed to contain all the conditions of contract with the crew as to their service, pay, voyage, and all other things, must be shown by the master to any consul, or other commercial agent of the United States, whenever he may wish to see them for the purpose of ascertaining the rights of any seaman applying to him for his aid or assistance.[2]

If any master of a vessel proceeds on a foreign voyage without these documents, (a copy of a list of his crew and a copy of the shipping articles,) or refuses to produce them when required, he is liable, in damages, to every individual who suffers any injury thereby, and is also liable to pay a fine of one hundred dollars, to be recovered by any person suing therefor in any court of the United States where such master may reside or be found.[3]

The duty of the master to take with him a copy of the List of his Crew, and a copy of the Shipping Articles, will be more fully considered on pages 22 and 29.

The Copy of the List of the Crew, and of the Shipping Articles taken to sea by the Captain, must not be Interlined, &c.—All interlineations, erasures, or writing in a different hand from that in which such copies were originally made, shall be deemed fraudulent alterations, and such alterations are not to be regarded, unless satisfactorily explained in a manner consistent with innocent purposes and the provisions of the law which guard the rights of seamen.[4]

Shipment of Seamen in Foreign Ports.—Whenever any master ships a seaman in a foreign port, he must take the list of his crew, and the shipping articles to the Consul, or person who discharges the duties of the office at that port, who will make the proper entries thereon, setting forth the contract, and describing the person of the mariner; and thereupon the bond originally given for the return of the men shall embrace each person so shipped.[5]

If the master does not do this, he is liable in damages to any person injured thereby, and is also liable to pay a fine of one hundred dollars.[6]

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(1) Act 1803, ch. 62, sec. 1; Act 1840, ch. 48, sec. 1. — (2) Act 1840, ch. 48 sec. 3. — (3) Ibid. sec. 19. — (4) Ibid. 4. — (5) Act 1840, ch. 48, sec. 8. — 6) Ibid. 19.

CHAPTER II.

TREATMENT OF SEAMEN.

Treatment of Seamen.— Seamen may Desert on account of Ill-treatment.—Rights of Seamen to good and sufficient Provisions.—Sickness to be cured at the expense of the Vessel.—Hospital Money for what purpose Paid.

Treatment of Seamen.—There are reciprocal duties between the master and his men. The seaman engages for the faithful performance of the services for which he contracted. The master, on his part, engages to treat the seaman with decency and kindness; and to protect him against the abuse or ill-treatment of the other officers, or of his ship-mates.[1]

The seaman is to be furnished with suitable food and nourishment during the voyage, and if the master withholds it from him, it will justify him in leaving the ship. (See page 13.)

If a seaman is sick, he is to be cured at the expense of the ship. (See page 14.)

The master has the power of punishing the seamen for negligence, or disorderly, or disobedient conduct. This power is given for the purpose of sustaining good discipline. It must be exercised with moderation and humanity. The punishment inflicted by the master must be moderate in degree, both proportioned to the nature of the offence, and the exigency of the occasion, and administered in a proper manner.[2] (See page 55.)

It is the duty of the master to take care, that the crew are not made the victims of the insolence, the passions, or the caprices of the officers under him. If he stands by and sees a seaman cruelly, or improperly beaten, without interference, it is presumed that he approves and encourages what is done, and he is liable in damages.[3]

When the captain is on board, no other officer has any right to inflict punishment without his assent or direction, unless in a case of necessity, which admits of no delay. (See page 59.)

As a protection to the seamen against the cruelty of the

(1) Ware's R. 109.——(2) 1 Story, 91.——(3) 2 Sumner, 1.

officers, it is provided by an Act of Congress, that if any master or other officer of any American vessel shall, from malice, hatred, or revenge, and without justifiable cause, beat, wound, or imprison, any one or more of the crew, or withhold from them suitable food and nourishment, or inflict upon them any cruel or unusual punishment, every person so offending shall be punished by fine, not exceeding one thousand dollars, or by imprisonment, not exceeding five years, or by both, according to the nature and aggravation of the offence.[1]

Seamen may Desert on account of Ill-treatment.— If the master, instead of exercising his authority with moderation and humanity, and for sustaining a proper discipline on board the ship, gives himself up to a harsh and cruel temper, and flogs and beats a man with unreasonable severity, or if, yielding to a personal pique or prejudice, he harasses a man by capricious tyranny, and punishes him without cause, or punishes him for slight and trivial faults with unreasonable and wanton cruelty, the seaman would be justified in deserting, and his wages would not in such case be forfeited.[2]

But a single act of cruelty, although it exceeds the bounds of moderation, will not justify a seaman in deserting the ship, unless there is reasonable ground for apprehending that his life will be in peril if he remains on board. In general, there must have been repeated acts of cruelty in order to justify a seaman in deserting.[3]

Wages, as will hereafter be seen, are not forfeited when the seaman is justified in deserting. (See page 43.)

Rights of Seamen to good and sufficient Provisions.— It is provided by an Act of Congress, that every vessel of one hundred and fifty tons burthen, or more, bound on a voyage across the Atlantic ocean, shall, at the time of leaving the last port from which she sails, have on board, well secured under deck, at least *sixty gallons of water, one hundred pounds of salted flesh meat, and one hundred pounds of wholesome ship-bread, for every person on board* the vessel, over and besides such other provisions, stores and live stock, as shall be put on board the vessel by the master and passengers. Provisions in like proportion must be put on board for other voyages according to their length.[4]

(1) Act 1835, ch. 313, sec. 3. —(2) Ware's R. 109. —(3) Ibid. 91.—(4) Act 1790, ch. 53 sec. 9.

If any vessel proceeds to sea without the quantity and quality of provisions and water required by this Act, and the seamen are put upon short allowance in water, meat, or bread, during the voyage, they will be entitled to double wages for every day they are put upon short allowance, to be recovered in the same manner as their other wages.[1]

Seamen shipped in foreign ports are protected by this Act, as well as those shipped at the commencement of the voyage. The test question in these cases is, whether the master or owner neglected to provide the vessel at the last port from which she sailed, with such provisions and water as are required by law.[2]

Where the master or owner can procure the particular kinds of provision named in this Act, he must do so, and it will not be sufficient to procure other kinds of provision, though they may be equally as good.[3]

But when the master is unable to obtain the kinds of provision which this Act names, other kinds may be substituted as equivalents: but, in such case, the courts will be very careful to see that the provisions substituted are fully equivalent, both in quantity and quality, to those required by law.[4]

Seamen may be put on allowance by the master, unless it amounts to *short* allowance; and when there is any controversy whether it is short or not, the navy ration is taken as a proper standard as to quantity.[5] (See Appendix, *Navy Ration.*)

By another Act it is provided, that if any master or other officer of any American vessel, from malice, hatred, or revenge, and without justifiable cause, withhold from any one of the crew suitable food and nourishment, he shall be punished by a fine, not exceeding one thousand dollars, or by imprisonment not exceeding five years, or by both, according to the nature and aggravation of the offence.[6]

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(1) Act 1790, ch. 56, sec. 9. —— (2) 1 Peters' Admiralty, 223; Ibid. 219. —— (3) Ware's R. 454; 1 Pet. Adm. 229. ——(4) Ibid. In one case, where there was a much greater amount of beef and water on board than was required, but the bread was deficient in amount, the captain being unable to procure any greater quantity at the port whence he sailed, the District Court for South Carolina allowed the seamen one-third additional wages. This rule would not probably be adopted by any other court, as it is unreasonable to punish a master for not having on board certain kinds of provision where it is impossible for him to obtain them; and if in such case he procures a good substitute, it would seem to be all the law requires.—Bee's R. 80.

(5) Ware's R. 460; 1 Pet. Adm. 219, 223.——(6) Act 1835, ch. 313, sec. 3.

Sickness to be Cured at the Expense of the Vessel.—By an Act of Congress, vessels bound on certain voyages are required to have a suitable medicine chest on board. Seamen will be better able to understand this Act, if they are first made acquainted with the law in force before this Act was passed. The principles of the maritime law in force before the passage of this Act, therefore, will first be stated, and then the Act will be given with suitable explanations of it.

By the general maritime law, if a seaman falls sick during the voyage, or is injured or becomes disabled in the service of the ship, he is entitled to be cured at the expense of the ship.[1]

If, however, the sickness or disability is the consequence of the seaman's drunkenness, misconduct or other irregularities, he must be cured at his own charge;[2] for the sickness or disability did not happen in the service of the ship.

All necessary expenses incurred for the cure of seamen are to be paid by the owners. Thus they are to pay for the medicine and medical advice, the nursing, the board of the seaman, when he is carried on shore, and any other expenses necessarily incurred in the cure.[3]

The owners, however, are only liable for expenses incurred for the cure; and when the cure is completed, at least so far as the ordinary medical means extend, they are freed from all further liability. Thus, a sailor's leg or arm might be so injured in the ship's service, as to render it necessary to cut it off, and thus make him a cripple for life; yet the owners would only be liable for the expenses incurred in cutting off and healing the limb, and not for the damage which the loss of the limb must cause the seaman.[4]

The seamen are to be cured for all injuries and all sickness occurring in the service of the ship, without regard to the place where it happened. Thus, if the sailor is ashore in the ship's service, and is taken sick, or is injured, he is to be cured at the ship's expense, and this includes, as has been seen, his nursing and lodging.[5]

So it is immaterial whether the sickness or injury occurs in a home port or in a foreign port, upon the ocean or upon tide waters, if it happens while the sailor is in the service

(1) 1 Sumner, 195.——(2) Gilpin's R. 447.——(3) 2 Mason, 541.——(4) 1 Sumner, 195.——(5) 1 Sumner, 195.

of the ship, and while he is one of the crew, he is to be cured at her expense.[1]

By an Act of Congress it is provided that every vessel belonging to a citizen of the United States, of the burthen of one hundred and fifty tons or upwards, navigated by ten or more persons in the whole, and bound on a voyage without the limits of the United States, shall be provided with a chest of medicines, put up by some apothecary of known reputation, and accompanied by directions for administering the same; and these medicines shall be examined by the same, or some other apothecary, once, at least, in every year, and supplied with fresh medicines in the place of such as shall have been used or spoiled. If such medicine chest is not so provided, and kept fit for use, then the commander of the vessel shall provide and pay for all such advice, medicine, or attendance of physicians, as any of the crew shall stand in need of in case of sickness, at every port or place which the ship or vessel may touch or trade at during the voyage, without any deduction from the wages of such sick seaman.[2]

By a subsequent Act, all merchant vessels of the burthen of seventy-five tons, or upwards, navigated with six persons or more in the whole, and bound from the United States to any port or ports in the West Indies, are required in like manner to have a suitable medicine chest.[3]

By this Act, if a vessel has the required medicine chest on board, and one of the sailors is taken sick, and has a physician, the physician's bill for attendance is to be paid out of the sailor's wages. All the other expenses for the cure are to be paid by the ship, in the same manner as they were before the passage of this Act. Thus the medicine is to be supplied from the chest, and the nursing, board, &c., are a charge upon the ship as before.[4]

(1) A whale ship returning from her voyage, anchored off Clark's Point, in New Bedford, her port of destination. The mates were rowed ashore by some of the sailors, and on attempting to return to the ship, they were surrounded by drifting ice, and were unable to reach her. They remained in this situation for some time, suffering extremely from the severity of the weather, until at length they were relieved from the shore. One of the sailors had his feet badly frozen, so that it became necessary to cut off his toes, and for more than a year he was under the care of a physician, requiring constant medical aid, diet, nursing, and other assistance. The owners objected to defraying the expense thus incurred for his cure, on the ground that this injury happened in a home port, and that the crew were discharged two days after it, the voyage being ended. But the court said that it made no difference where the sickness or injury occurred, if the sailor was at the time in the ship's service, and was one of her crew, and the costs of the cure were, therefore, held to be a charge upon the ship.—1 Sumner, 195

(2) Act 1790, ch. 56, sec. 8.——(3) Act 1805, ch. 88, sec. 1.——(4) Ware's Reports, 9.

If any vessel of the above description is not provided with the proper medicine chest, and with suitable directions for using it, and a sailor is taken sick, then the physician's bill, in case the sailor has one, is to be a charge upon the ship, as well as the other expenses for the cure. The owners, in order to avoid their liability to pay for a physician where one is employed, must be able to show that the medicine chest and the directions required by law, were on board the vessel, and they must be able to prove it by some other person than the master, who is not a competent witness to establish that fact.[1]

But even if there is a suitable medicine chest on board, yet if the sailor cannot have the benefit of the medicine, the charge for medical advice is to be paid by the ship. Thus, where the sick sailor is carried ashore, or where he is taken sick while on shore, and remains there, as he cannot have the benefit of the medicine chest, the expense for the attendance and advice of a physician is a charge upon the ship.[2]

So where there is no competent person to administer the medicine to the sick sailor, as where the master and mates are all sick, the owners would be liable to pay for the expense of a physician, in case one was called; for the medicine chest is of no benefit to the sailors, unless there is some competent person to give the medicine, according to the directions accompanying the chest.[3]

But although the captain is sick, or not on board, yet if the mate is there, and is not sick, he is deemed a competent person to administer the medicine, and if, in such case, a sailor has a physician, he must pay for him.[4]

Where the vessel is furnished with a proper medicine chest, accompanied with suitable directions for its use, and the sailor is taken sick on board, and remains there, and a physician is called, his charge must be paid by the sailor, and it makes no difference that the disease is of a dangerous and infectious nature, and that it would have been highly imprudent for the master not to have called a physician. And in such a case the expense of the physician must be paid by the sailor, though the physician was called without his request.[5]

(1) Ware's Reports, 367.——(2) Ibid. 420.——(3) Ibid. — (4) 8 Shep. 402
(5) 8 Shep. 402; Gilpin's R. 447. It has been thought by some judges, that in a case requiring *surgical skill* and assistance, such as a dislocation or a fracture, in which the medicine chest and its directions, with all the assistance and intelli-

A stipulation is sometimes inserted in the shipping articles, that the expense of nursing and boarding a seaman, sick on shore, shall not be chargeable to the ship, but shall be paid by the seaman. This stipulation is void, and the expense is to be borne by the ship in the same manner as if it had not been inserted.[1]

It will be seen hereafter that the wages of seamen are not stopped during their sickness. (See page 36.)

Hospital Money for what purpose Paid.—Provisions are also made for the relief of sick and disabled seamen in American ports, by the erection and maintenance of temporary and permanent Hospitals. By an Act of Congress, "it is provided, that the master or owner of every vessel of the United States, arriving from a foreign port into any port of the United States, shall pay to the collector at the rate of twenty cents per month, out of his wages, for every seaman employed on board of the vessel, since she was last entered at any port of the United States."[2] This provision has been extended to seamen in registered vessels employed in the coasting trade,[3] and to persons employed in navigating boats and rafts on the Mississippi.[4] The same assessment is to be made upon the wages of the officers, seamen, and marines, of the Navy of the United States.[5]

The money so raised is to be expended for the temporary relief and maintenance of sick and disabled seamen, in the hospitals, or other proper institutions established for such purposes; and in those ports where no such institutions exist, the money is to be expended for their relief, in such manner as the President of the United States shall direct. The surplus money, when sufficiently accumulated, is to be applied to the erection of marine hospitals, for the accommodation of sick or disabled seamen.[6]

All seamen are the objects of the bounty, who are sick

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gence of the master or of any one belonging to the ship, would be of no avail, the expense of a physician would be a charge upon the ship, and it probably would. It has also been supposed by some learned judges, that this Act of Congress was intended as a benefit to the seaman, and not as a measure of relief to the shipowners. They have thought, therefore, that in the case of a dangerous and malignant disease, where it would be an act of temerity on the part of the master to undertake to give medicine under such general directions as usually accompany the medicine chest, without calling in the aid of a physician, where one can be had, the master ought to procure a physician, and the expense of such physician ought to be paid by the owners; but we have seen that it has been decided differently.—Ware's R. 420; 1 Sumner, 591.

(1) 2 Mason, 511.——(2) Act 1798, ch. 94, sec. 1.——(3) Ibid. sec. 2; Act 1843, ch. 49.——(4) Act 1802, ch. 51, sec. 3.——(5) Act 1799, ch. 142, sec. 2.——(6) Act 1798, ch. 94, sec. 4.

or disabled, without the slightest reference to the time, the place, or the manner, of their sickness or disability, whether in port or on the ocean; in the service of the ship, or otherwise; from their own fault, or from inevitable casualty.[1]

It seems it has never been the practice to compel seamen engaged in the whale and other fisheries to pay hospital money; and it had been thought that they would not, therefore, be entitled to the benefit of the hospitals; but this has never been decided, and the language of the Act is sufficiently broad to include them as well as other seamen.[2]

These hospitals, as far as it can be done with convenience, are to receive sick foreign seamen, upon the application of the commander of any foreign vessel to which such sick seamen may belong. Each foreign seaman, so admitted, is to be subjected to a charge of seventy-five cents per day during the time he remains in the hospital, to be paid by the commander of such foreign vessel to the collector of the district in which the hospital is situated.[3]

[The residence of a seaman in the hospital extends to a limited period of *four* months. If his situation is such as to require his longer continuance, *special application* must be made to the *Secretary of the Treasury* of the United States for permission.]

CHAPTER III.

RIGHTS OF SEAMEN.

Rights of Seamen if Ship is not Seaworthy.—Wrongful Discharge of Seamen during the Voyage.—Rights of Seamen wrongfully discharged.—Discharge of Seamen by their own consent.—Discharge of Seamen when the Vessel is sold in a Foreign Port.—Relief of Destitute Seamen in Foreign Ports. Seamen not bound to proceed on a voyage different from that named in the Articles.—Right to Salvage.—Protection to be afforded Seamen by Consuls.—Charges of Consuls.

Rights of Seamen if Ship is not Seaworthy.—By an Act of Congress it is provided, that if the mate, or first officer, and a majority of the crew of any vessel, bound on a foreign

(1) 1 Sumner, 201.—(2) Ibid.—(3) Act 1802, ch. 51, sec. 5.

voyage, shall discover, after the voyage is begun, and before the vessel has left the land, that she is too leaky, or is unfit in her crew, body, tackle, apparel, furniture, provisions, or stores, to proceed on the intended voyage, they may require the master to proceed forthwith to the nearest or most convenient port. The master must then go to the judge of the district court, if he reside there, or if not, then, to some justice of the peace, taking with him two of the crew who made the complaint, and request the judge or justice of the peace to order a survey. The judge or justice thereupon orders a survey, and, after the survey is made, decides whether the vessel is or is not in a suitable condition to proceed; and if not, whether the repairs can be made, or deficiencies supplied, where the vessel then lays, or whether it is necessary for the vessel to return to the port from which she first sailed, to be refitted. The master and crew are both bound by the decision of the judge or justice of the peace, and must comply with it. If it is decided that the vessel is seaworthy in every particular, and that the complaint was made without cause, the expense of the survey, together with reasonable damages for the detention, to be ascertained by the judge or justice, are to be deducted out of the wages of those of the crew who made the complaint. But if the complaint is found to have been rightly made, then the expense is to be borne by the owners.[1]

If the judge or justice of the peace decide that the vessel is seaworthy, then the seamen are bound to proceed in her; so they are bound to proceed in her, if the captain procures such repairs, or supplies, as he may be directed to procure. If, in either case, any seaman refuses to proceed on the voyage, any justice of the peace may commit such seaman to the common jail, there to remain until he shall have paid double the amount of his advance wages, and the reasonable costs allowed by the justice.[2]

It is further provided that if the first officer, or any officer, and a majority of the crew of any vessel shall make complaint in writing that she is in an unsuitable condition to go to sea, because she is leaky, or insufficiently supplied with sails, rigging, anchors, or any other equipment, or that the crew is insufficient to man her, or that her provisions, stores, and supplies are not, or have not been during the voyage, sufficient and wholesome, thereupon, in any of these

(1) Act 1790, ch. 56, sec. 3.—(2) Ibid.

or like cases, the Consul, or commercial agent, who may discharge any duties of a Consul, shall appoint two disinterested,competent, practical men,acquainted with maritime affairs, to examine into the causes of complaint These men are to report whether or not they found any defects or deficiencies, and if so, what ought to be done to put the vessel in a proper condition for the continuance of the voyage.[1]

If the men appointed to examine into the cause of complaint report that, in their opinion, the vessel was sent to sea unsuitably provided in any important or essential particular, by neglect or design, and the Consul, or commercial agent, approves of the report, he must discharge such of the crew as require it, and any seaman discharged will be entitled to three months' pay in addition to his wages to the time of his discharge. But if they shall report that the defects or deficiencies found to exist have been the result of mistake or accident, and could not, in the exercise of ordinary care, have been known and provided against before the sailing of the vessel, and the master shall, in a reasonable time, remove or remedy the causes of complaint, then the crew shall remain and discharge their duty; if the master does not remove or remedy the cause of complaint in a reasonable time, then the Consul or agent shall discharge such of the crew as request it, and any seaman thus discharged, will be entitled to one month's pay in addition to his wages, up to the time of discharge.[2]

If the inspectors report that the complaint is without any good and sufficient cause, the master may retain from the wages of those who made the complaint, in proportion to the pay of each, such expenses incurred, with such reasonable damages for the detention, as shall be certified to be correct by the Consul, or commercial agent. But if they do not so report, then the expenses and damages are not to be deducted from their wages.[3]

When the ship is at sea, it is no excuse for the refusal of a seaman to do his duty, that she was unseaworthy when she sailed. He is bound, in such case, to perform his duty faithfully and diligently, and in times of peril, to exert himself to the utmost to save both the ship and the cargo.[4]

Wrongful Discharge of Seamen during the Voyage. — It is the policy of the law to discourage the discharge of

(1) Act 1840, ch. 48, sec 12.——(2) Ibid. sec. 14.——(3) Ibid.——(4)Ware's R. 9.

seamen during the voyage; and though it is true that a master may be justified in discharging a seaman for gross misconduct, yet he must not discharge him for slight offences, and certainly not for a single offence, unless of a very aggravated character. What misconduct of the sailor will justify his discharge by the master will be considered hereafter, when we treat of the "DUTIES OF SEAMEN." (See page 51). It is the design of this article to state the means that have been adopted to prevent the *wrongful* discharge of seamen before the termination of the voyage.

Before a clearance is granted to any vessel bound on a foreign voyage, the master must deliver to the collector of the port a list, containing the names, places of birth, and residence, and a description of the persons who compose his ship's company, and the master must make oath or affirmation, that this list contains the names of his crew, together with the places of their birth and residence, as far as he can ascertain them. The master must then obtain from the collector a certified copy of this list, and give a bond of four hundred dollars with sufficient security, that he will exhibit this certified copy of the list to the first boarding officer, at the first port in the United States at which he shall arrive, on his return, and then and there also produce to the officer the persons named in this list. It is the duty of the boarding officer to ascertain that all the men named in the list are on board, and to report the same to the collector of the port; and in order to be sure that the list produced by the master is the one given him when he sailed, if the vessel does not return to the port from which she sailed, the collector at the port of arrival must send a copy of the list exhibited by the master to the collector of the port from which she sailed [1].

This bond given by the master will not, however, be forfeited on account of the master's not producing to the first boarding officer, any of the persons named in the list, if such person has been discharged in a foreign country with the consent of the Consul, vice-Consul, commercial agent, or vice-commercial agent, there residing, signified in writing, under his hand and official seal, and this written consent is produced to the collector; or if the master can give satisfactory proof to the collector that such seaman has died, or deserted, or been forcibly impressed into other service.[2]

(1) Act 1803, ch. 62, sec. 1.—(2) Ibid.

As a greater security against fraud it is provided, that the certified copy of the list to be furnished the master by the collector shall be a fair copy in one uniform handwriting, without erasure or interlineation. And all interlineations, erasures, or writing in a different hand from that in which such copy was originally made, will be deemed fraudulent alterations, working no change in the paper, unless satisfactorily explained in a manner consistent with innocent purposes, and the provisions of the law which guard the rights of seamen.[1]

Whenever any master ships a seaman in a foreign port, he must forthwith take the list of his crew and the shipping articles to the Consul, or person who discharges the duties of the office of that port, who shall make the proper entries in these documents, setting forth the contract, and describing the person of the seaman. This having been done, the master is bound for the return of this seaman in the same manner that he is for the others, that is, such seaman is then included in the bond given by the master for the return of the seamen.[2]

If any master should neglect this duty when he ships a seaman in a foreign port, he would be liable to any person who was injured thereby, and also be liable to pay a fine of one hundred dollars for each offence, to be recovered by any person suing therefor in any court of the United States, where the master may reside, or be found.[3]

It is further provided, that if the master of any vessel, belonging in whole or in part, to any citizen of the United States, shall, during his being abroad, maliciously, and without justifiable cause, force any officer or seaman of such vessel on shore, or leave him behind in any foreign port or place, or refuse to bring home again all such of the officers and seamen of such vessel, whom he carried out with him, as are in a condition to return, and willing to return, when he shall be ready to proceed on his homeward voyage, every master, so offending, shall, on conviction, be punished by fine, not exceeding five hundred dollars, or by imprisonment, not exceeding six months, according to the aggravation of the offence.[4]

It will be seen hereafter that even where the conduct of the sailor is such as to justify the master in discharging him,

(1) Act 1840, ch. 23, sec. 1, 4.——(2) Act 1840, ch. 23, sec. 8.——(3) Act 1840, ch. 23,sec. 19.——(4) Act 1825, ch. 276, sec. 10.

yet if he repents and offers amends, he is ordinarily entitled to be received on board again. (See pages 44, 45.)

Rights of Seamen Wrongfully Discharged.—It is a general rule, that a seaman who is discharged without a justifiable cause and without his own consent, is entitled to full wages for the whole voyage, and the expenses incurred by him in returning home. And any wages he may earn in the meantime are to be deducted from the expenses of his return, though not from the wages due.[1] This is not always the case, as will be seen hereafter in the chapter on "*Wages*," where the subject has been fully treated. (See page 37.)

Discharge of Seamen by their own consent.—By an Act of Congress it is provided, that whenever any seaman who is a citizen of the United States is discharged with his own consent in a foreign country, the master shall produce the list of his crew to the Consul, vice-Consul, commercial agent, or vice-commercial agent, and pay to him for every American seaman so discharged, three months' wages over and above the wages which may be due such seaman. Two of the three months' wages thus received, are to be paid to the discharged seaman upon his engagement on board any vessel to return to the United States; the other month's wages is to be kept by the Consul, to be used for the maintenance of any American seamen who may be destitute in that port.[2]

This law has since been altered, and the Consul may, if he thinks it expedient, permit the master to discharge a seaman with his own consent, without requiring him to pay three months' extra wages, or any other sum of money; and the Consul may permit the discharge of the sailor on such terms as will, in his judgment, save the United States from the liability to support the discharged seaman.[3]

Discharge of Seamen when the Vessel is sold in a Foreign Port.—Whenever a vessel, belonging to a citizen of the United States, is sold in a foreign country, and the crew discharged, it is the duty of the master to produce to the Consul, or person who discharges the duties of the office at that port, the list of the ship's company, and to pay to the Consul for every American seaman so discharged, who is named in the list, three months' wages, over and above the wages which are then due such seamen. Out of this sum

(1) Ware's R. 65.—(2) Act 1803, ch. 62, sec. 3.—(3) Act 1840, ch 23, sec. 5, 6.

the Consul is to pay each seaman two months' wages upon his engagement on board of any vessel to return to the United States ; the other month's wages is to be retained by him, to be used for the support of any American seamen who may be destitute in that port.[1]

The above provision applies only to the case of a voluntary sale of the vessel ; if the vessel is sold because the master cannot proceed with her, she being wrecked or greatly injured by storms or otherwise, the seamen are not entitled to the three months' extra wages. But the owners will be liable to pay the extra wages, unless they can prove that the vessel could not be repaired at a reasonable expense, and in a reasonable time.[2]

Relief of Destitute Seamen in Foreign Ports.—Great solicitude has been manifested by our government for the protection of seamen in foreign countries. It is made the duty of American Consuls and commercial agents, to provide subsistence for any seaman of the United States who may be found destitute in their districts, and to procure a passage for them to some port in the United States, in a reasonable manner, and at the expense of the United States. And the master of any American vessel bound to a port in the United States is bound to take such seamen on board of his vessel, at the request of the Consul or commercial agent, and to carry them to the port of the United States to which his vessel is bound, for such a sum, not exceeding ten dollars for each person, as may be agreed between the master and the Consul. The Consul cannot, however, compel the master to take more than two seamen for every hundred tons' burthen of the ship. If the master refuses, he forfeits one hundred dollars for every seaman so refused, to be recovered for the benefit of the United States.[3]

Foreigners, while employed as seamen in the merchant ships of the United States, are held entitled to the benefit of the above provision, so long, at least, as they manifest an intention of remaining in the American service, and do not engage in foreign service. And, in one case, where a foreigner, employed on board an American vessel, deserted, and became destitute, it was held that he was entitled to the protection of the Consul, and to be sent to some port in the

(1) Act 1803, ch. 62, sec. 3.——(2) Ware's R. 485 ; Gilpin's R. 193.——(3) Act 1803, ch. 62, sec. 4.

United States, according to the above provision; and that the fact of his desertion, unless followed up by engaging in some foreign service, did not deprive him of his right.[1]

All seamen who are thus placed on board of a vessel by the Consul to be carried to a port in the United States, must, if they are able, perform duty on board the vessel, according to their several abilities;[2] and while on board would seem to be subject to the same rules and regulations as the other seamen, and are liable, like articled seamen, to be punished for offences committed against any law of the United States.[3]

Seamen not bound to proceed on a Voyage different from that named in the Articles.—It will be seen hereafter, when the subject of Wages is treated, that where a seaman refuses to proceed on a voyage not named in the articles, and deserts, his wages are not forfeited. So, if the master has an avowed intention to go on a different voyage previous to the completion of the voyage for which a seaman had signed the shipping articles, such an intended departure will be sufficient to justify the seaman leaving the ship, and suing for his wages during the time he served on board. (See page 44.)

It is provided by an Act of Congress, that, when any seaman believes that the voyage is continued contrary to his agreement, or that he has fulfilled his contract, he may complain to the Consul, or other commercial agent performing like duties, who shall examine into the same by an inspection of the articles of agreement; and if on the face of them he finds the complaint to be well founded, he shall discharge the seaman, if he desires it, and require of the master an advance, beyond the lawful claims of the mariner, of three months' wages; and if the lawful claims of the seaman are not paid upon his discharge, the arrears shall from that time bear an interest of twenty per cent. Provided, however, if the Consul, or other commercial agent shall be satisfied the contract has expired, or the voyage been protracted by circumstances beyond the control of the master, and without any design on his part to violate the articles of shipment, then he may, if he deems it just, discharge the mariner without exacting the three months' pay.[4] (See page 29.)

(1) 1 Sumner, 115.—(2) Act 1803, ch. 62, sec. 4.—(3) 1 Pet. C. C. R. 118.—(4) Act 1840, ch. 23, sec. 9.

Of the three months' extra wages which the master may be required to pay, only two months' would be paid to the sailor, the other month being retained by the Consul for the purpose of relieving destitute seamen.[1]

In the case of a deviation from the voyage described in the articles, occasioned by accident, or necessity, (as where the vessel is driven from her course by a storm, or is compelled to put into a port out of the course of the voyage, for the purpose of making necessary repairs, &c.), the seamen will not be justified in deserting.[2]

Right to Salvage.—It has been a question whether, when a vessel in the course of her voyage falls in with a wreck, the master has a right to compel the crew to assist in attempting to save it. It is extremely doubtful whether seamen are bound to obey an order directing a portion of the crew to leave their own vessel, and go on board of another for the purpose of carrying the vessel to port, and thus earning salvage. This is a duty which the sailor, as it would seem, has not stipulated to perform in his contract; it has, however, been thought by one judge, that the customs and usages of the sea authorize a master in such cases to employ his vessel and crew in rescuing from destruction property thus exposed.[3]

Where salvage is earned, all the crew who are ready and willing to engage in the service, as well those who remain on board their own vessel, as those who were employed in saving the property, are entitled to a share of the reward.[4]

If any sailor refuses to lend assistance in rescuing the property, he will not be entitled to any share in the salvage.[5]

What portion of rescued property is to be allowed as salvage, must depend in a great degree upon the circumstances of each case. The value of the property saved, and the difficulties and dangers encountered in saving it, are the facts most to be considered in estimating the share to be paid the salvors. In cases of *derelict*, (that is, where the vessel or property has been abandoned by the master and crew, without any intention to return to it,) the courts seldom, if ever, award less than one-third, or more than one-half of the property saved.[6]

In what proportions the salvage money is to be divided

(1) Act 1840, ch. 23, sec. 29.—(2) 2 Hagg. 213.—(3) Ware's R. 447.—(4) Ibid.—(5) Ibid.; 2 Dods. Adm. 132.—(6) 1 Sumner, 400.

among the owners, officers and crew of the vessel engaged in the salvage service, must also depend in some measure upon the facts in each case. The owners usually draw one-third of the salvage; the master has a larger portion than the mate, usually double; the mate usually has more than those of the crew who were actually employed in rescuing the vessel, and two or three times as much as those of the crew who remained on board of their own vessel; those of the crew employed in saving the property have more than the rest of the crew, and sometimes their portion is double that of the others.[1]

If salvors, in effecting a salvage service, themselves fall into distress, and are relieved by other salvors, they do not lose their original right to salvage; but the second salvors only partake in the salvage according to their merit. Second salvors cannot lawfully make it a condition of giving assistance, that the first salvors shall abandon all claims to salvage.[2]

Seamen, in the ordinary course of things, in the performance of their duties, can have no claim in the nature of salvage for services rendered on board their own vessel, whatever may be the perils, or hardships, or gallantry of their services in saving their own ship and cargo. It is the duty of a seaman not only to navigate the vessel in favorable weather, but to protect her through all perils, and his entire possible service for this purpose is pledged to that extent.[3]

Extraordinary events, however, may occur in which the sailors will be entitled to salvage for assistance rendered their own vessel. Thus, if a vessel in distress is abandoned at sea by the master and all the crew, excepting one man who is left either by accident or design, he is discharged from his contract as seaman, and entitled to salvage.[4] So, where a captured vessel is afterwards rescued by her seamen, they will be entitled to salvage.[5]

When the master of a vessel, in the course of the voyage, engages in a salvage service, he cannot oppose to the claim of any of his crew for a share of the salvage, their misconduct during the voyage, if they are guilty of no misconduct during the time they are engaged in the salvage.[6]

If one of the salvors embezzles part of the goods saved, he forfeits his right to salvage. But embezzlement by one

(1) 1 Sumner, 400.——(2) Ibid ——(3) 10 Pet. S. C. 108; 1 Hagg. 227.——(4) 2 Cranch, 240.——(5) 1 Rob. Adm. 271; 1 Pet. Adm. 70.——(6) Ware's R. 447.

of the salvors does not affect the other salvors, nor does embezzlement participated in by the master and crew of the salvor ship, affect the innocent owners of her.[1]

Right to claim the assistance of Consuls.—It is provided by an act of Congress, that the crew of any vessel shall have the fullest liberty to lay their complaints before the Consul, or commercial agent, in any foreign port, and shall in no respect be restrained or hindered therein by the master or any officer, unless some sufficient and valid objection exist against their landing; in which case, if any mariner desire to see the Consul, or commercial agent, it shall be the duty of the master to acquaint him with it forthwith; stating the reason why the mariner is not permitted to land, and that he is desired to come on board; whereupon it shall be the duty of such Consul, or commercial agent, to repair on board and inquire into the causes of the complaint.[2]

If the master does not perform his duty in this respect, he is liable in damages to any person who is injured thereby, and is also liable to pay a fine of one hundred dollars for each offence.[3]

Whenever the Consul, or other commercial agent, may wish to see the shipping articles or the list of the crew for the purpose of ascertaining the rights of any seaman applying to him for his aid and assistance, the master must produce them; and if he does not produce them, he is liable in damages, to any person injured thereby; and also to a fine of one hundred dollars.[4] (See page 11.)

Whenever the ship is in an unsuitable condition to go to sea, or the provisions, stores and supplies are not, or have not been during the voyage, sufficient and wholesome, the Consul must have the matter examined upon proper application. (See pages 19—21.)

Whenever the voyage is continued contrary to agreement, or the seaman has fulfilled his contract, he may procure his discharge by application to the Consul. (See page 26.)

Where a seaman is discharged abroad by his consent, it has been seen, what application must be made to the Consul. (See page 24.)

When seamen are discharged on account of the sale of the ship in a foreign port, extra wages must be paid to the Consul for them. (See page 24.)

(1) 2 Cranch, 240; Ware's R. 373.——(2) Act 1840, ch. 48, sec. 16.——(3) Ibid. sec. 19 ——(4) Ibid. sec. 3, 19.

The Consul is authorized to employ the authorities of the place to reclaim a deserting seaman. (See page 54.)

If a seaman, deserting on account of cruel treatment, is arrested, he may apply to the Consul, who shall discharge him. The seaman, thus discharged, will be entitled to receive, in addition to his wages to the time of his discharge, three months' pay. (See page 54.)

Charges of Consuls.—Any Consul, or officer performing the duties of the office, may charge *fifty cents* for every certificate of discharge of any seaman in a foreign port; and he may charge *two and a half per cent* commission on paying and receiving the amount of wages payable on the discharge of seamen in foreign ports.[1]

CHAPTER IV.

RIGHT OF SEAMEN TO WAGES.

When full wages are earned.— Wages how affected by Shipwreck.— Where the Vessel is Wrecked on her Outward Voyage.—Where the Vessel is Wrecked on her Homeward Voyage.—Where the Vessel is Wrecked between Intermediate Ports.— Where part of the Freight has been earned, though the Vessel is wrecked.— Where Part of the Wreck is Saved.— Where Part of the Cargo is Saved.— Wages how affected by the Capture of the Ship.—Wages how affected where the voyage is broken up by Interdiction of Commerce or by Embargo.— Effect of Unusual Stipulations in the Shipping Articles making the Wages dependent upon the safe performance by the Ship of the whole Voyage. — Wages increased when the Seamen are put on Short Allowance.—Wages how affected when the Shipping Articles are not signed by the Seamen as required by Law.—Wages how affected by the Sickness of the Seamen during the Voyage. — Wages how affected by Death. — Wages how affected when a Seaman is Wrongfully Discharged. — Wages how affected where the Seamen are Discharged abroad with their own consent — Wages how affected where Seamen are Discharged abroad in consequence of the sale of the Ship.

The general principle of the law is, that freight is the "*mother of wages*"; whenever any freight is or might be

(1) Act 1803, ch. 62, sec. 6.

earned, wages are due. If the voyage or freight is lost by the negligence, fraud, or misconduct of the owners or master, the seamen will be entitled to their full wages But if the freight is *entirely* lost by reason of shipwreck, or other peril of the seas, they are not usually entitled to any wages. There are, however, exceptions to this last rule, which will be hereafter stated.[1]

In the case of general average, in the course of the voyage, the wages of seamen do not contribute to the loss, except in case of rescue, recapture, and ransoms. Neither, in the case of salvage, do seamen's wages contribute, except in the case of recapture.[2]

Seamen cannot insure their wages; and in a case where they are not entitled to wages because the freight has been lost in consequence of shipwreck or otherwise, they have no claim to the insurance on the freight recovered by the owners.[3]

When full wages are earned.—When a seaman has discharged his duties for the whole voyage, he is, of course, entitled to full wages. He cannot, however, recover more than the wages agreed upon, of which agreement the shipping articles are conclusive evidence. If, therefore, the seamen induce the master by threats, or otherwise, to promise them a greater amount of wages than that stated in the shipping articles, that promise is void.[4]

Wages how affected by Shipwreck.—Where the Vessel is Wrecked on her Outward Voyage.—If the ship and cargo are *entirely* lost on the outward voyage, so that no freight is earned, the seamen are not entitled to any wages. In such case, however, the advance wages are not to be returned.[5] It will be hereafter seen, to what wages they are entitled, where some portion of the freight, or the wreck of the vessel, or a part of the cargo, is saved. (See page 33.)

Where the Vessel is Wrecked on her Homeward Voyage.—If the ship and cargo are *entirely* lost on the homeward voyage, so that no freight on the return cargo is earned, the seamen are entitled to wages up to the time of the ship's arrival at the port of delivery or destination on the outward voyage, and for one-half the time she lies there; for one-half the time during which the vessel is lying in port is deemed to belong to the outward voyage, and the other half to the homeward voyage.[6]

(1) 3 Sumner, 50.—(2) Ibid.—(3) 2 Pet. Adm. 276.—(4) 14 Johns. 260.—(5) 4 Mason, 102; Gilpin's R. 77.—(6) 3 Sumner, 256.

If, in such case, the vessel had performed her outward voyage in ballast, and thus not earned any freight, the seamen would still be entitled to their wages for the outward voyage and half the time she lay in port.[1]

In one case, where the ship, after having discharged her outward cargo, proceeded in ballast to another port for the purpose of taking on board the return cargo, and was afterwards lost on her homeward voyage, it was held that the seamen's wages were due up to the arrival of the ship at the port where the home cargo was received, and for half the time she lay there.[2] In a similar case, it was held by another court, that full wages were due to the seamen up to the time of the ship's arrival at the port where the outward cargo was delivered; and half wages from that time until her departure from the port where the home cargo was taken on board.[3]

Where the Vessel is Wrecked between intermediate ports. —Where a vessel stops at several ports on her voyage for the purpose of receiving or delivering goods, as is usually the case in trading voyages, and the vessel and cargo are lost between the intermediate ports, the rule is, that the seamen are entitled to wages up to the last port of delivery before the loss of the vessel, and for half the time the ship lies there.[4]

If in such case the vessel should sail in ballast from the "*last port of delivery*" to another port for the purpose of receiving a cargo, and having taken a cargo on board, should be lost, the seamen would probably be entitled to wages up to this last port, and for half the time she lay there; for where the vessel proceeds from one port to another in the service and for the benefit of the owner, if he does not choose to carry a cargo, and, therefore, does not earn freight, it is his own fault, and ought not to operate to the injury of the sailors.[5] But the decisions of the different courts have not been uniform upon this point, and in a similar case, it was held by another court, that the seamen were entitled to half wages only, from the time the vessel arrived at the last port of delivery up to her departure from the port to which she had proceeded for the purpose of receiving another cargo.[6] The first rule is obviously the most just, and would undoubtedly be adopted by most of the courts.

(1) 2 Mason, 331.——(2) Ibid.——(3) 1 Pet C. C. R. 182.——(4) 1 Pet. Adm. 215.——(5) 2 Mason, 319.——(6) 1 Pet. C. C. R. 182.

Where part of the freight has been earned, though the Vessel is Wrecked.—If, in the case of shipwreck, or loss from any other cause, a part of the cargo is saved, and carried to the port of destination, so that part of the freight is earned, or if, from any cause, some portion of the freight money is saved, the sailors are entitled to full wages, provided sufficient freight has been earned to pay them, or if it is not sufficient, then to the extent of the freight earned.[1]

Thus, if the ship should become a total wreck on the outward voyage, yet if, by reason of a portion of the cargo being saved, or from any other cause, the owners should become entitled to some portion of the freight, the sailors have a right to be paid out of the freight earned, if sufficient, their full wages for the outward voyage.

Where a part of the wreck is saved.—In cases of shipwreck, seamen are entitled to full wages, if *by their exertions* remnants of the vessel to the amount of their wages are saved, although no freight is earned. If the wreck will not bring enough to pay full wages, then the seamen are entitled to wages to the extent of the value of the wreck.[2]

In order to entitle seamen to wages from the proceeds of the wreck, it must have been saved by their exertions; if, therefore, they abandon the wreck, and leave it without hope of recovery, or without an intention of returning, and it is afterwards picked up and saved, the seamen cannot claim to have their wages paid out of it, but must lose them.[3]

If, however, after a vessel is cast on shore, the owner comes with a gang of hands and takes charge of the wreck, and does not ask the aid of the sailors, they being willing to render it, they may recover their wages in an action against the remnants of the vessel.[4]

Where a Part of the Cargo is Saved.—In one case, it was held, that where any part of the cargo is saved, though no freight has been earned, the seamen shall receive their wages out of the property preserved. In such case, however, the preservation of the property must have been owing to their services and exertions.[5]

Wages how affected by the Capture of the Ship.—If a ship is captured and condemned, the seamen are discharged

(1) 3 Sumner, 69.——(2) 7 Law Rep. 522.——(3) Ware's R. 41.——(4) 7 Law Rep. 522.——(5) Gilpin's R. 79.

unless there is a subsequent restitution of the property, or of its equivalent value, upon an appeal, or by treaty, with an allowance of freight, in which event their claim for wages revives.[1]

Where the ship is captured on her homeward voyage, wages are due for the outward voyage, and for half the time the vessel lies in port.[2]

If, after a ship is captured, and a part of the crew removed, she is rescued by the remaining crew, and performs her voyage, full wages are due not only to the seamen who rescued her, but also to those taken out of her and kept prisoners.[3]

So, if the ship is captured during the voyage, and her crew taken out and detained prisoners, and she is afterwards recaptured and proceeds on her voyage and earns freight, the seamen thus taken out are entitled to full wages for the voyage, though never restored to the ship. They must, however, pay their proportion of the salvage upon the recapture.[4]

So, if the captured ship is ransomed, and performs her voyage, all the seamen, as well those who are taken out on the capture as those who remain, are entitled to full wages for the voyage; they must, however, contribute from their wages to the ransom.[5]

If a foreign power seizes the ship, and imprisons the seamen, and they are afterwards released, and reassume, and complete the voyage, and earn freight, their wages are continued during the interruption of the voyage.[6]

If the ship is seized and carried out of the course of her voyage, and is afterwards restored, and arrives in safety at her port of delivery, the seamen receive their wages for the whole time of such detention.[7]

Wages how affected where the Voyage is broken up by Interdiction of Commerce or by Embargo.— If the voyage is broken up by interdiction of commerce with the port of destination, after its commencement, no wages are due. But if the seamen are subsequently retained by the master to refit and preserve the ship, they are entitled to a reasonable compensation in the nature of wages.[8]

If one or more freight to intermediate ports had been

(1) 2 Sumner, 443.—(2) 11 Mass 545.— (3) 1 Pet. Adm. 132.—(4) 12 Johns 324; 1 Pet. Adm. 115.—(5) 1 Pet. C. C. R. 142.—(6) 4 East. 546.—(7) 11 Mass. 545.—(8) 2 Gall. 164.

earned by the vessel before commerce was prohibited, or if by a voluntary acceptance of the cargo, at an intermediate port, a part of the freight had been earned, full wages for that portion of the voyage would unquestionably be due.[1]

An embargo is a temporary restraint, and is not deemed a dissolution of the voyage, or of the contracts concerning it. If the voyage be afterwards completed, or a new voyage substituted, the sailors are entitled to wages during the embargo.[2]

Effect of Unusual Stipulations in the Shipping Articles making the Wages of the Seamen dependant upon the safe performance by the Ship of the Whole Voyage.—For the purpose of making the seamen's wages depend upon the safe performance by the ship of the whole voyage, it is sometimes stipulated in the shipping articles that "no officer or seamen belonging to the said ship, shall demand or be entitled to his wages or any part thereof, *until the arrival* of the said ship, at the above-mentioned port of discharge," &c. It has been decided, that this clause only regulates the *time and place* of payment of the wages, and that, if the vessel is wrecked or otherwise lost on the voyage, the seamen are entitled to wages up to the last port of delivery or destination, in the same manner as if this stipulation had not been inserted.[3]

So, a clause in the shipping articles that, "in case of the said vessel being taken or lost in the course of the said voyage, no wages shall be demanded or received by the subscribers, except the advance wages received by them respectively, at the time of entry on board, and that, if the vessel should be restrained for more than thirty days at any one time, the wages should cease during such restraint, and no longer," was declared to be of no force, and the seamen are entitled to their wages in the same manner as if this clause had not been inserted.[4]

Courts watch very closely any alterations made from the common form of the shipping articles; and if any clause is inserted which impairs the general rights and privileges of seamen, they will have no effect, unless it appears that the nature and operation of the clause was fully explained to the seamen, and that additional wages were allowed them, entirely adequate to the new restrictions imposed upon them.[5]

(1) 2 Gall. 164.——(2) 2 Dall. 170.——(3) 2 Sumner, 443; 15 Mass. 173; 1 Pet. Adm 215.——(2) 2 Sumner, 443.——(5) Ibid.

Wages increased when the Seamen are put on Short Allowance.—The quantity and kind of provision required by law on certain voyages have been already stated under the title of "*Right of Seamen to good and sufficient Provision.*" It has been there seen, that if the vessel does not take to sea the quantity and kind of provision required by law, and the seamen are put on short allowance during the voyage, they are entitled to double wages during the whole time they are thus kept on short allowance. (See pages 13, 14.)

Wages how affected when the Shipping Articles are not signed by the Seamen as required by Law.—It has been seen that, on certain voyages, the law requires the seamen to sign the shipping articles; and if a master takes any seaman on any one of the voyages mentioned, without his having signed shipping articles, such seaman may leave the vessel at any time, and demand for his services the highest rate of wages given to any seaman during the voyage, or the rate of wages at which he was hired at the time of his shipment. (See page 9.)

The master also forfeits twenty dollars for every seaman shipped contrary to this law, one half to go to the person prosecuting for the same, and the other half to the United States.[1]

Wages how affected by the Sickness of the Seamen during the Voyage.—If a sailor becomes sick or disabled during the voyage, so as to be unable to perform duty on board the ship, he is nevertheless entitled to full wages during the whole time of such sickness or disability. So, if the sailor is sent ashore in the ship's service, and is there taken sick, he is still entitled to full wages for the voyage.[2]

If, however, a sailor, left ashore sick, recovers, and has an opportunity to rejoin his ship, and does not, he cannot claim full wages for the voyage, but only up to the time when he might have rejoined her, deducting any wages which he had earned after his recovery from sickness, and before he could rejoin her.[3]

If a seaman enters himself as competent, and fails in his duty from a want of competent knowledge, or because his health was not good when he entered, the master may make a reasonable deduction from his wages. So if the sickness or injury occurring during the voyage is occasioned by the

(1) Act 1790, ch. 56, sec. 1.—(2) 1 Pet. Adm. 115.—(3) Ibid. 138.

fault or vice of the seaman himself, a deduction may be made from his wages.[1]

If the sailor becomes sick or disabled before the voyage begins, and does not proceed on the voyage, no wages are due. If, in such case, the sailor had actually rendered any service, he would be entitled to a reasonable compensation therefor.[2]

Wages how affected by Death —The rule respecting the amount of wages to be paid in the case of the death of a seaman during the voyage is not uniform. All the courts agree that the heirs and representatives of the seamen are entitled to his wages up to the time of his death.[3] But some of the courts go farther, and allow them to recover wages for the whole voyage.[4]

Where a person ships as an able-bodied seaman, when in fact he has a fatal disease, of which he dies after the vessel sails, no wages are allowed [5]

In case a seaman dies in a foreign hospital, or on shore, or elsewhere than on board the vessel, the wages, money and effects, if not already deposited, must be delivered up to the consul, or commercial agent, nearest to the place where such death occurs.

Wages how affected when a Seaman is Wrongfully Discharged.—When a seaman has been wrongfully discharged during the voyage, he is entitled to a full compensation for the injury done him, which must depend upon the time lost, and expenses incurred by him.[6]

It is usual, in such cases, to pay the seaman thus discharged full wages for the whole voyage.[7] But this would evidently be too much in some cases, as where the seaman is shipped for a long voyage, and is dismissed at an intermediate port early in the voyage, and immediately returns home; in this case, he would probably be entitled to recover wages and his expenses up to his arrival home.[8]

So there are cases, when the seaman would, probably, be entitled to more than his wages for the whole voyage, as where he is dismissed in a remote part of the world, and has no opportunity to return until long after the voyage is completed. So, if the case of dismissal is one of gross and

(1) 3 Kent's Com. 186.——(2) 2 Gall. 56.——(3) Bee's Reports, 441, 255.——(4) 1 Wash. C. C. 414; 1 Pet. Adm. 142, 155, 157.——(5) 2 Pet. Adm 263——(6) 1 Mason, 45.——(7) Abbott on Ship. 620.——(8) 1 Mason, 45; Ware's Reports, 65.

harsh misbehavior, or wanton injustice on the part of the master, the courts would undoubtedly be disposed to award to the sailor most ample compensation.[1]

If the sailor is wrongfully discharged before the voyage is begun, he is entitled to wages during the time he is actually retained in the ship's service, and if he suffer any special damage, to a reasonable compensation for that also.[2]

Wages how affected when Seamen are discharged abroad with their own Consent.—The seaman, would, of course, be entitled to wages up to the time of such discharge; and, in addition to this, it is provided by an Act of Congress, that when an American seaman is discharged in a foreign country, with his own consent, it shall be the duty of the master to produce to the Consul, or commercial agent, the certified list of his ship's company, (which it has been seen he is required by law to carry, page 10,) and to pay to such Consul, or commercial agent, for every seaman so discharged, being described on the list as a citizen of the United States, three months' pay over and above the wages which may then be due to the seaman. Two of these three months' extra wages are to be paid to the discharged seaman by the Consul, upon his engagement on board of any vessel to return to the United States; the other month's wages is to be retained by the Consul for the purpose of creating a fund for the payment of the passages of seamen belonging to the United States, who may be desirous of returning home, and for the maintenance of American seamen who may be destitute in such foreign port.[3]

This Act has been altered somewhat by a subsequent Act, which authorizes any Consul of the United States, or if there be none residing at the foreign port, then any commercial agent authorized to perform such duties, upon the application of both the master and any seaman of the vessel, to discharge the seaman, if he thinks it expedient, *without requiring the payment of three months' wages, or of any extra wages;* and he may discharge him, upon such terms as will, in his judgment, save the United States from the liability to support such seaman.[4]

Wages how affected when Seamen are Discharged abroad on account of the Sale of the Vessel.—Wages would be due

(1) 1 Mason, 45; Ware's Reports, 65.——(2) 2 Gall. 58.——(3) Act 1803, ch. 62.——(4) Act 1840, ch. 48, sec. 56.

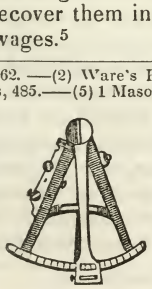
up to the time of the sale; and it is provided by an Act of Congress, that whenever a vessel belonging to a citizen of the United States, is sold in a foreign country, and the crew discharged, it shall be the duty of the master to produce to the Consul, or commercial agent, the certified list of the ship's company, and to pay to the Consul, or commercial agent, for every citizen so discharged, being described on the list as a citizen of the United States, three months' pay over and above the wages which may then be due him. Two-thirds of these extra wages, or two months' wages, are to be paid the seaman upon his engagement on board of any vessel to return to the United States; the other month's wages is to be retained by the Consul, to be used for the relief of destitute American seamen in the port.[1]

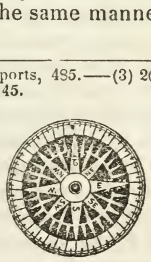
This Act of Congress, allowing extra wages to the crew upon the sale of the vessel, and their discharge in a foreign country, applies only to the case of a voluntary sale of a vessel, and not where the sale is rendered necessary by a shipwreck, in which case extra wages will not be required.[2] In one case, where the vessel was obliged to be sold, the seamen were allowed out of the proceeds of the vessel, a sum in addition to their wages, to pay their expenses in returning home.[3]

To free the owners upon the sale of a vessel abroad from liability to pay the extra wages, the sale must be one of necessity; if, therefore, the vessel can be repaired at a reasonable expense and in a reasonable time, the owners will be liable to pay the extra wages; and it is for the owners to prove, if they wish to avoid such payment, that the vessel could not be so repaired.[4]

If these extra wages are not paid over to the Consul, a seaman may recover them in the same manner as he recovers his other wages.[5]

(1) Act 1803, ch. 62. —(2) Ware's Reports, 485.—(3) 26 Am. Jur. 216.—(4) Ware's Reports, 485.—(5) 1 Mason, 45.





CHAPTER V.

FORFEITURE OF WAGES.

When Wages are forfeited by Desertion at the Commencement of the Voyage. — Forfeiture of Wages by Desertion during the Voyage as provided by Act of Congress. — Forfeiture of Wages in other cases of Desertion during the Voyage not contained in the Act of Congress. — Forfeiture of Wages by Desertion when the Ship is in Danger. — Forfeiture of Wages for refusing to Defend the Ship. — Wages not wholly Forfeited where the seamen leaves the Vessel after the Voyage is Ended, but before the Cargo is Discharged. — Wages not Forfeited when the Desertion is Justifiable. — Wages not Forfeited when the Desertion is occasioned by a Deviation from the Voyage. — How Seamen may be restored to their right to Wages forfeited by Desertion. — Wages Forfeited by Misconduct. — How Seamen may be restored to their right to Wages forfeited by Misconduct. — A Seaman Imprisoned for Misbehavior or Desertion does not Forfeit his Wages. — Wages when forfeited by Embezzlement. — Wages when forfeited by the Illegality of the Voyage.

Forfeiture of Wages.—By Desertion at the Commencement of the Voyage.—It has been seen that, on certain voyages, the master must make each seaman, shipped by him, sign shipping articles. (See page 7.) At the foot of these shipping articles, the day and the hour when the seaman is to render himself on board is stated. If a seaman neglects to render himself on board at the appointed time, he forfeits one day's pay for every hour's absence, provided the master, or other officer of the vessel, on the day on which this neglect happens, enters in the log-book the name of the seaman and the time that he has so neglected to render himself on board. And if he wholly neglects to render himself on board, or having rendered himself on board, he deserts and escapes, so that the vessel proceeds to sea without him, he forfeits to the master, owner, or consignee of the ship, a sum equal to double the amount of his advance wages.[1]

In order to subject the sailor to this forfeiture, three things must concur: 1, the day and hour when he was to render

(1) Act 1790, ch. 56, sec. 2.

himself on board must be stated in the shipping articles; 2, an entry must be made in the log-book, stating the name of the sailor, and the time that he neglected to render himself on board; 3, this entry in the log-book must be made on the day when such neglect happened.

Forfeiture of Wages, by Desertion, during the Voyage, as provided by Act of Congress.—If at any time during the voyage, a sailor who has signed proper shipping articles, absents himself from the ship without leave, but returns to his duty within forty-eight hours, he shall forfeit three days' pay for every day's absence. But if he is absent more than forty-eight hours at one time, he forfeits all the wages due him, and all his goods which were on board the ship, or in any store where they may have been lodged, at the time of the desertion, and is also liable to pay all damages the master or owner may sustain by being obliged to hire another sailor in his place. The master or officer having charge of the log-book must, however, enter in it, on the day on which the sailor absents himself, the name of the sailor, and that he is absent without leave.[1]

To subject a sailor, absenting himself without leave, to this forfeiture, three things are necessary; *first*, he must have signed suitable shipping articles; *second*, an entry must be made in the log-book by the master or officer having charge of it, stating the *name* of the sailor, and that he is absent *without leave; third*, this entry must be made *on the day* on which the sailor absents himself. If either one of these three things is wanting, the sailor is not liable to the above forfeiture, though he may be liable to another forfeiture, which is about to be stated below.

A clause is sometimes inserted in the shipping articles, that the seamen shall be liable to this forfeiture for desertion, if the proper entry is not made in the log-book. This clause is void and of no effect.[2]

It has been seen that, on certain voyages, any seaman who is taken to sea without having signed shipping articles, may leave the ship at any time, and demand the highest rate of wages paid to any seaman on board, or the wages he agreed to serve for. If, therefore, in such a case a sailor leaves the ship, there is no forfeiture. (See page 9.)

It will be seen hereafter (title, "*Arrest of Deserters,*'

(1) Act 1790, ch. 56, sec. 5.—(2) 1 Sumner, 373.

page 53,) that where a sailor, who has signed shipping articles, deserts, any justice of the peace within the United States, upon the complaint of the master, may cause the deserting sailor to be arrested and imprisoned until the vessel is ready to sail, or until the master shall require his discharge, and then to be delivered to the master.

If a seaman suffers punishment for his desertion by imprisonment in this way, his wages are not forfeited. His wages will not even be stopped during his imprisonment; but the cost of his commitment, and his expenses while in prison, and also the sum paid to a person necessarily employed to fill his place, will be deducted from them.[1]

Forfeiture of Wages in other cases of Desertion during the Voyage, not contained in the Act of Congress.—In the cases, where a seaman, who has not signed articles, and is not required by law to sign them, leaves the ship without leave; or where a seaman, who has signed articles leaves the ship without leave, but the master or officer having charge of the log-book has not made the proper entry in it, at the proper time, the law is different from what has just been stated. These cases are governed by what is called the *maritime law.*

By the maritime law, a seaman, who quits the ship without leave, and without intending to return again to the ship's duty, is a deserter, and forfeits the whole of his wages. In order, therefore, to subject a deserting seaman, in these cases, to a forfeiture of his wages, he must not only have left the ship without leave, but he must have left with the intention of not again returning to the ship's duty.[2]

One way to prove that the sailor did not intend to return again, would probably be to show that he was absent a great length of time, and that the vessel had to sail without him. But if in these cases he should be absent without leave for more than forty-eight hours, and should then return, his wages would not be forfeited as in those cases coming within the Act of Congress; for there was no intention of not returning, which, as has been seen, must be shown in these cases.

But though the seaman may not have deserted, and therefore, has not forfeited all his wages, yet if he has neglected his duty, and absented himself from the vessel without any justifiable excuse, and without leave of the master,

(1) Bee's Reports, 48.——(2) Ware's Reports, 309; 1 Sumner, 375.

the law will punish his conduct by a proper deduction from his wages.[1]

Forfeiture of Wages by Desertion when the Ship is in Danger.—It is the duty of seamen to remain by the vessel as long as reasonable hope remains; and if they desert the ship under circumstances of danger or distress from perils of the sea, when their presence and exertions might have prevented damage, or restored the ship to safety, they forfeit their wages, and are answerable in damages.[2]

Forfeiture of Wages for refusing to Defend the Ship.—If any seamen or inferior officers of any merchant ship, shall refuse or decline to defend the ship, or utter words to discourage others from doing so; every seaman so behaving shall lose all his wages, together with such goods as he may have in the ship, and suffer imprisonment; and every mariner who shall have laid violent hands on his commander to hinder him from fighting in defence of his ship and goods, shall suffer death as a felon.[3]

Wages not wholly forfeited where the Seaman leaves the Vessel after the Voyage is Ended, but before the Cargo is Discharged.—Desertion, in order to work a forfeiture of wages, must be *during* the voyage, and before it is ended. The voyage is ended when the vessel has arrived and is safely moored at her proper port of destination. But though the voyage is then at an end, the duty of the seamen does not cease, for as will be seen hereafter, seamen must, unless discharged, remain and assist in unloading the vessel; and if they do not, though their wages are not wholly forfeited, yet they will be liable for all the damage their desertion occasioned.[4] (See page 55.)

Wages not forfeited when the Desertion is justifiable.—If a seaman quits the ship from necessity, from want of provisions, or on account of cruel usage and for personal safety, his wages are not forfeited, and he will be entitled to receive them in full to the prosperous termination of the voyage.[5]

Although a seaman is compelled to desert on account of the cruelty of the master, his wages are not forfeited; yet to justify a seaman in leaving the vessel before the termination of the voyage, on account of the cruelty of the master, it must be apparent that he could not remain without

(1) Ware's Reports, 309; 1 Sumner, 375.—(2) 2 Pet. Adm. 395.—(3) Carl) II. 7 & 9.—(4) 1 Sumner, 373.—(5) Ware's Reports, 109; 1 Hagg. 59, 182.

extreme danger to his personal safety.[1] Repeated acts of cruelty and oppression on the part of the master will justify a seaman in deserting the vessel; but not a single act of assault, although it may exceed the bounds of moderation, unless there be reasonable grounds for apprehending that such acts of oppression will be repeated.[2] (See page 13.)

Wages not forfeited when the Desertion is occasioned by a Deviation from the Voyage.—Refusal to proceed on a different voyage from the one stated in the shipping articles, will not cause the forfeiture of wages.[3] So, if the master has an avowed intention to go on a different voyage previous to the completion of the voyage for which a seaman had signed the shipping articles, such an intended departure will be sufficient to justify the seaman in leaving the ship, and suing for his wages during the time he served on board.[4]

How Seamen may be restored to their right to Wages forfeited by Desertion.—The master has power to pardon a seaman who has deserted, and to remit the forfeiture; and if he receives him again into his service, and the seaman performs his duty, the forfeiture is waived, that is, he is entitled to the same wages as if he had not deserted.[5]

And in a case where the seaman shall have clearly deserted without justifiable cause, or absented himself more than forty-eight hours, yet, if he repents of his offence, and offers to return to his duty, the master must receive him, if his services are tendered in a reasonable time, and before another person has been engaged in his stead, unless his prior conduct has been so flagrantly wrong, that it would justify his discharge. And if the seaman thus received back, conducts himself properly, and discharges his duties faithfully during the remainder of the voyage, he is entitled to his wages for the whole voyage.[6]

But although, in these cases, the seaman is restored to his right to wages for the whole voyage, yet, if the owners have suffered any special damage from the absence of the seaman, he is liable therefor, and the amount of it may be deducted from his wages.[7]

A clause is sometimes inserted in the shipping articles to the effect that, if a seaman forfeits his wages by desertion

(1) Gilpin's Reports, 219.——(2) Ware's Reports, 91.——(3) 3 Hagg. 182, 248, 347 ——(4) 3 Kent's Com. 198 n —(5) 1 Sumner, 373.——(6) Ibid.——(7) Mason, 84.

or misconduct, he shall not be entitled to the wages thus forfeited, even if he is received back or reinstated by the master in his duties. This clause is void and of no effect.[1]

Wages forfeited by Misconduct.—The wages of seamen are forfeited for gross offences; but not for slight faults, either of neglect or disobedience. There must either be a constant neglect, or disobedience, or a single act of a high and aggravated nature, threatening the most serious mischief, peril, or wrong.[2]

Drunkenness, when habitual, so as to incapacitate the sailor for his duty, will cause a forfeiture of wages; but a single act of drunkenness, or occasional acts, where the sailor in other respects performs his duty, is not a sufficient cause for a forfeiture of wages.[3]

A refusal to do duty, at a moment of high excitement from punishment inflicted on the seaman, if not followed by an obstinate perseverance in disobeying orders, is not sufficient cause for a forfeiture of wages.[4]

It will be seen, hereafter, that the master may discharge a seaman for misconduct; but not for slight offences. (See page 59.)

How Seamen may be restored to their right to Wages forfeited by Misconduct.—It has been before stated that the master has power to remit a forfeiture; and if the sailor apologizes and offers amends for his misconduct, and conducts himself properly afterwards, he is entitled to be restored to his claim for wages.[5]

But the mere fact that, after his wages have been forfeited by his misconduct, he remains on board, and performs his duty during the remainder of the voyage, will not entitle the seaman to the wages forfeited by such misconduct. To reinstate himself he must offer amends for his misconduct, and manifest by his subsequent good behavior, and diligence in the discharge of his duty, that he is sincere in his offers.[6]

In those cases of negligence, or misconduct, or drunkenness of the seaman, which are not punished by a forfeiture of the whole wages, a reasonable deduction is made, if the owners suffer any loss thereby.[7]

Thus, the charge for a person necessarily employed in the place of a seaman absent without leave, is to be deducted

(1) 2 Mason, 541. — (2) Ibid. 84.—(3) 4 Mason, 541.—(4) Ibid.—(5) Ibid. 84.—(6) Ibid.—(7) Ibid.; 1 Pet. Adm. 150.

from his wages. So, where a vessel is detained by the refusal of the seamen to work, they are to be charged with the demurrage, and the proportion of each seaman who refused, is to be deducted from his wages.[1]

A Seaman Imprisoned for Misbehavior, does not forfeit his Wages.—Where a seaman is imprisoned in a foreign jail, for misbehavior, he does not forfeit his wages, not even during his confinement, neither is he to be charged with the sum paid for a hand employed in his place, while he was in prison; nor with the prison expenses. The law will not permit the master to inflict the double punishment of imprisonment and forfeiture of wages.[2]

In one case, where a seaman might have been discharged during the voyage for gross misconduct, but the master instead of discharging him, left him in prison abroad, he was allowed his wages until his return to the United States, after deducting from the claim his time of imprisonment.[3] (See page 58.)

It will be seen hereafter, that the master may cause a seaman deserting in any port in the United States, to be arrested and imprisoned until he sails or requires him. (See title, "*Arrest of Deserters*," page 53.) In such case, the cost of his commitment and support while in prison, and also the charge for a person necessarily employed in his place, are to be deducted from his wages.[3] But his wages are not stopped during his imprisonment.

The subject of the imprisonment of seamen in foreign jails, by captains, will be considered hereafter. (See page 58)

If a seaman is arrested while on shore for misconduct, the police costs and charges incurred thereby are to be deducted from his wages[5].

Wages when Forfeited by Embezzlement.—If the cargo be embezzled or injured by the fraud or negligence of the seamen, the master may deduct the amount of the loss or injury from the wages of the seamen by whose misconduct it has been occasioned.[6]

The authorities conflict as to what cases of embezzlement all the crew are bound to contribute. The most equitable rules, and those which most of the courts would

(1) Gilpin's Reports, 140.——(2) Ibid. 83; 1 Pet. Adm. 176 n.——(3) 12 Serge & Rawle, 265.——(4) Gilpin's Reports, 291, 435.——(5) Ibid. 140.——(6) Abbott on Ship. P. 5, ch. 3, sec. 5.

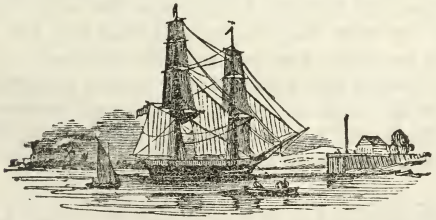
probably adopt, are :— that where the embezzlement has arisen from the fault, fraud, connivance, or negligence of any of the crew, they are bound to contribute to it, in proportion to their wages ;—that where the embezzlement is fixed on one person, he is *solely* responsible ;—that where the embezzlement is clearly shown to have been made by the crew, but the particular offenders are unknown, and from the circumstances of the case, strong presumptions of guilt apply to the whole crew, *all* must contribute; but that where no fault, fraud, connivance, or negligence is proved against the crew, and no reasonable presumption is shown against their innocence, the loss must be borne exclusively by the owner or master ;—that in no case are the innocent part of the crew to contribute for the misconduct of the guilty ; and, further, that in case of uncertainty, the burthen of proof rests on the owners to establish the guilt of the crew, before the contribution can be demanded.[1]

Wages when Forfeited by the Illegality of the Voyage. If the voyage is illegal, (such as a smuggling voyage, &c.,) and such illegality is known to the seaman, he will not be entitled to his wages.[2]

If the seamen are ignorant and innocent of the illegality of the voyage, they are entitled to their wages ; and if, in such case, the vessel should be seized by government and forfeited, the claim of the crew on the vessel for wages would be preferred to that of the Government.[3]

(1) 1 Mason, 104. Some of the Courts have established severer rules, and in cases of embezzlement, compel all the sailors to contribute, unless they can establish their innocence ; and, in one case, where some of the goods were embezzled, and the guilty persons could not be discovered, it was held that all the crew must contribute, and that though one of them was absent from the ship, and not in a situation to be capable of assisting in the plunder, he must, nevertheless, contribute with the rest —1 Pet. Adm. 242 n. 240.

(2) 2 Mason, 58.——(3) 9 Wheat. 409 ; 5 Pet. S. C. R. 675.



CHAPTER VI.

RECOVERY OF WAGES.

Wages when payable. — How to be paid. — Wages may be recovered of the Master. — Wages may be recovered of the Owners. — Seamen's lien upon the Vessel for their Wages. — How soon Seamen may proceed against the Vessel for their Wages. — Seamen's lien upon the Freight for Wages. — Interest.

Wages when Payable.—Every seaman is entitled to demand and receive from the master or commander, one-third part of the wages which shall be due to him, at every port where the vessel unlades and delivers her cargo before the voyage is ended, unless the contrary is expressly stipulated in the shipping articles.[1]

Whether the seamen are entitled to their wages when the voyage is ended, or whether they must wait until after the discharge of the cargo, depends upon whether they are discharged as soon as the voyage is ended, or not until after the cargo is delivered. The duty of seamen to assist in unloading will be hereafter considered. (See page 55.)

How to be Paid.—Seamen have a fourfold security for their wages, the master, the owners, the ship and the freight.[2]

Wages may be recovered of the Master.—The seamen may recover their wages of the master; and his liability is the same whether he signs the shipping articles before or after the seamen. In the case where seamen are shipped and sign the articles before a master is appointed, a blank is left for the name of the master, and when one is appointed and signs the articles, he assumes the same liability in regard to the crew shipped, as a master who has himself personally made the contract with the sailors.[3]

It would seem that where a new master is appointed on account of the death or removal of the old master during the voyage, he will only be liable for the wages subsequently accruing, and not for those already earned under the first master.[4]

(1) Act 1790, ch. 56, sec. 6 —(2) Gilpin's Reports, 592; Ware's Reports, 134. —(3) 6 Mass. 300.—(4) 11 John. 72.

Wages may be recovered of the Owners.—Seamen have a twofold remedy against the owner; they may proceed against his ship and freight, or they may sue him personally. His personal liability will first be treated.

The owner may be sued by the seamen for their wages, although his name is not stated in the shipping articles.[1] And if the owner after having shipped a crew, and caused them to sign the shipping articles, should sell the ship and freight to another person before the voyage was completed, or before any wages were due, he would still be liable to the seamen for their wages.[2]

The owners will be liable for the wages of a seaman employed by the master, notwithstanding the master may have had a full complement of men without him.[3]

If the vessel is chartered, and the charterer is to victual and man her, then he, and not the owners of the vessel, is personally liable. The seamen have, however, the same lien upon the vessel, as when employed by her owners.

If the vessel is abandoned to the insurers, they become the owners, and are liable for wages earned subsequently to the time of the abandonment.[4] The owners, and not the insurers, would be liable for whatever wages might be earned before the abandonment.[5]

Seamen's lien upon the Vessel for their Wages.—Every seaman has a lien upon the vessel for his wages, that is, a right to detain the vessel by process of law, until his wages are paid. Their claim upon the vessel is a sacred lien; and it has been emphatically said, to be nailed to the last plank in the ship.[6] So long as a single plank remains, the sailor is entitled, as against all other persons, to the proceeds, as a security for his wages, for by their labor the common pledge for all the debts is preserved.[7]

This lien of the seamen for their wages is not lost by the

(1) Gilpin's Reports, 592.— (2) Ibid.

(3) A boy, without the knowledge of his father, concealed himself on board a whaling vessel, before she sailed from Salem, and was not discovered by the master until she had dismissed her pilot. When about a month out the master stopped at Fayal, where there was an American Consul, but said nothing to him about the boy. The boy performed the duty of a seaman during the whole voyage, and, when eighteen months out, signed the shipping articles. It was held that the father of the boy was entitled to wages for him, from the time the ship sailed from Fayal, although the ship had a full complement of men without him; and that the master might have left him at Fayal without paying the three months' wages required when sailors are discharged in foreign ports.—7 Law Rep. 132.

(4) 4 Mason, 196.—(5) 2 Mass. 39.—(6) Ware's Reports, 330.—(7) 3 Sumner, 50; Paine's Reports, 180.

sale of the vessel, or by her sailing upon another voyage. If, however, a seaman who had a claim upon a vessel for his wages, should be present when she was sold, and make no objection to her sale, his lien upon her would be lost. And if a seaman to whom wages are due, should make no claim upon the vessel for a great length of time, although he might have attached her, and she is sold to a person who is ignorant of the seaman's claim, it would be exceedingly doubtful whether he had not lost his lien upon the vessel by his negligence.[1]

If the ship is captured and afterwards restored, the lien re-attaches to the ship, or if restitution is made in money, the lien attaches to the sum recovered.[2]

How soon Seamen may proceed against the Vessel for their Wages —If a seaman's wages are not paid within ten days after the voyage is ended, he may libel the vessel, that is, cause her to be detained by process of law. And in case the vessel has left the port where the voyage ended, or is about to leave that port, before the ten days expire, he may libel her forthwith.[3]

If the seamen are bound to remain and assist in discharging the cargo, then they cannot attach the vessel until ten days after the cargo is discharged, unless she is going to sail before that time. If the sailor is discharged at the end of the voyage, and before the cargo is unloaded, then he may proceed against the vessel in ten days from his discharge.[4]

In cases where the crew are retained to assist in delivering the cargo, if the owners should unreasonably delay to unload the vessel, the ten days would commence running from the period in which the cargo might have been discharged; and fifteen or twenty days is the time usually allowed for discharging cargo.[5]

Seamen's Lien upon the Freight for their Wages.—Seamen have a lien on the freight as well as on the vessel for their wages. And where part or the whole of the cargo is shipped by the owner or charterer, they have a lien on such cargo for a charge in the nature of freight. This lien, like that on the vessel, is to be preferred to all other claims.[6]

Thus, it has been seen, that if the ship is lost, yet if part of the freight is earned, the seamen are entitled to their wages to the extent of such freight. (See page 33.)

(1) 2 Sumner, 443; 3 ibid., 51.——(2) 5 Pet. S. C. 675.——(3) Act 1790, ch. 56, sec. 6.——(4) Ware's R., 454.——(5) 1 Pet. Adm. 16, 210.——(6) Ware's R., 134.

This lien may be enforced against the freight by seizing it in the hands of the master, or of the merchant, before it is paid.[1]

Interest.—In suits for wages, interest is allowed from the time the seaman can prove he made a demand for his wages; and if no demand is proved, then from the commencement of the suit.[2]

CHAPTER VII.

DUTIES OF SEAMEN.

Duties of Seamen.—Rendering on board.—Refusal to proceed on account of the Unseaworthiness of the Vessel.—Cannot refuse to proceed from dislike to the Master, or because a New Master has been appointed—Duties during the Voyage.—Duty when the ship is in danger.—Seamen not to leave the Ship during the Voyage without permission.—Desertion.—Arrest of Deserters.—When a Deserter is entitled to be received back.—Duty to assist in Loading and Unloading.—Punishment of Seamen for Misconduct, &c.—Use of Dangerous or Deadly Weapons in Punishment.—Imprisonment of Seamen in Foreign Jails.—Mate cannot punish the Seamen.—Discharge of Seamen for Misconduct.—Dis-rating or Degrading Seamen.

Having examined the "*Rights of Seamen*," it is now proposed to state some of their principal duties, and the punishments which may follow the breach of them.

A seaman shipping for a voyage, undertakes to serve on board the ship during the voyage contracted for, and to conduct himself in an orderly, faithful, and honest manner, to be at all times diligent in his duty and station, and obedient to the lawful commands of the master. This statement would seem to comprise all the general duties of a seaman to his employers.

The breach of these duties and of this undertaking, consists in desertion, quarrelsomeness, turbulence, mutiny, disobedience, neglect of duty, drunkenness; offences which may be punished in a greater or less degree, according to their nature and aggravation.

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(1) Ware's Reports, 134; 3 Hagg. 200.——(2) 2 Gall. 45.

Rendering on Board.—The shipping articles usually state the day and hour on which the seamen are to render themselves on board. If a seaman neglects to render himself on board, at the time stated in the articles, he forfeits for every hour's neglect, one day's pay, to be deducted out of his wages. And if the vessel is obliged to proceed to sea without him, he forfeits a sum equal to twice his advance wages. (See page 40.)

To subject the unfaithful seaman to these forfeitures, three things must concur: *first*, he must have signed the shipping articles; *secondly*, the shipping articles must state the day and hour on which he was to render himself on board; *thirdly*, an entry in the log book must be made on the day on which the neglect happened, stating the name of the seaman, and the time he neglected to render himself on board.[1]

Refusal to proceed on account of the Unseaworthiness of the Vessel.—It has been already seen, what steps are to be taken by seamen, when they find themselves upon the point of being taken to sea in a vessel unfit in her crew, body, tackle, apparel, furniture, provisions or stores, to proceed on the intended voyage. (See page 19.)

Cannot refuse to proceed from dislike to the Master, or because a new Master has been appointed.—It sometimes happens that the seamen are shipped before the captain is appointed, a blank being left in the shipping articles for the name of the master; in such case, it is understood that the seamen agree to sail with any master whom the owners appoint.[2]

So where the master dies, is removed, or resigns, the seamen are bound to perform the voyage under any person who is lawfully substituted in his stead; for their engagement is with the owners, and not with a particular master.[3]

If, however, a person substituted as master, is grossly incompetent to the duties of his station, from want of due skill, or from grossly bad habits, or from profligate and cruel behavior, the seamen may refuse to do duty, or to remain by the ship. But such a case is to be made out beyond all reasonable doubt, and is not to be presumed.[4]

Duties during the Voyage.—During the voyage the

(1) Act 1790, ch. 56, sec. 2.——(2) 6 Mass. 300.——(3) 2 Sumner, 582.——(4) Ibid.

seamen must render a prompt obedience to the lawful commands of the master. And though the orders may be given in very harsh language, yet they must be obeyed; and no severity of mere manners, unconnected with actual oppression, can for a moment excuse the performance of duty.[1] The seaman must conduct himself in an orderly and respectful manner, and must at all times perform his duty with promptness and alacrity.

Duty when the Ship is in Danger.— This has been already considered, in examining the cases where wages are forfeited. (See page 43.)

Seamen must not leave the Ship during the Voyage without permission.— If a seaman who has signed the shipping articles, does so, and the officer having charge of the log book makes an entry therein on the day on which he absents himself, stating the name of such seaman, and that he is absent without leave, then the absenting seaman forfeits three days' pay for every day's absence, and if absent more than forty-eight hours at one time, it is deemed a desertion, and is punished by a forfeiture of all the wages then due. If the proper entry is not made in the log-book, then such seaman is liable for all damage which his absence may have occasioned, but he does not suffer the same forfeiture of wages as when the proper entry is made. (See pages 42, 43.)

Desertion.— What constitutes a desertion, and its effect upon the wages already earned, have been considered in another part of this work, to which the reader is referred. (See pages 40, 41.)

Seamen are sometimes justified in deserting on account of ill treatment, &c. (See page 13.)

If shipping articles are not signed by a seaman on certain voyages, he may leave the ship at any time, and claim the highest wages paid to any seaman on board, or the wages agreed to be paid him when he shipped. (See p. 9.)

The cases in which seamen may leave the ship on account of deviation from the voyage, have been stated. (See page 26.)

Arrest of Deserters.—If a seaman who has signed the shipping articles, deserts in any port of the United States, any Justice of the Peace, upon the complaint of the master,

(1) 2 Rob. Adm. 261.

may cause the deserter to be arrested and put in jail until the vessel sails; or the master requires his discharge.[1]

The Justice of the Peace must first be satisfied that the sailor signed the shipping articles, that the voyage agreed on is not finished, and that the sailor absented himself without leave.[2]

The cost of his commitment, and support while in prison, and also the charge for a person necessarily employed in his place, are to be deducted from his wages. But his wages are not stopped during his imprisonment.[3]

If a seaman deserts or absents himself in a foreign port, the consul or commercial agent is authorized to employ the authorities of the place to reclaim him. But in all cases where deserters are apprehended, the consul must inquire into the facts, and if satisfied that the desertion was caused by unusual or cruel treatment, the seaman must be discharged, and receive in addition to his wages to the time of the discharge, three months' pay.[4]

It has been seen that where a deserter is apprehended and imprisoned, he does not forfeit his wages. (See page 46)

Penalty for Harboring or Secreting Seamen.—If any person shall harbor, or secrete, any seaman belonging to any vessel, knowing him to belong thereto, he shall forfeit and pay ten dollars for every day he harbors or secretes such seaman, one-half to the use of the person prosecuting for the same, the other half to the use of the United States.[5]

When Debts contracted by Seamen cannot be collected until the voyage is ended.—No sum exceeding one dollar can be recovered from any seaman, for any debt contracted during the time such seaman belongs to any vessel, until the voyage, for which such seaman engaged, is ended.[6]

When a Deserter is entitled to be received back.—It has been seen that the master has the power to pardon a deserter, and to receive him back; and that if the seaman wishes to return, and is ready to make suitable apologies, and to repair the injury sustained by his misconduct, he is generally entitled to be received back, if he tender his services in a reasonable time, and before another person has been engaged in his stead. If received back, his wages

(1) Act 1790, ch. 56, sec. 7.——(2) Ibid.——(3) Gilpin's Reports, 294, 435.——(4) Act 1840, ch. 48, sec. 11, 17.——(5) Act 1790, ch. 56, sec. 4.——(6) Ibid.

are not forfeited, though any damage occasioned by his absence is deducted from them. (See page 45.)

Duty to assist in Loading and unloading.— The seamen are bound to take care of the vessel, and assist in the stowage and delivery of the cargo at the several ports to which the voyage, as described in the shipping articles, extends.[1]

When the vessel has arrived and is moored at the home port, the duty of the seamen is not yet finished. They must remain by the ship, and assist in discharging the cargo, if made in a reasonable time, unless there be some express or implied agreement, or established usage, to dispense with their further service.[2]

It is however, the uniform custom in most of the ports of the United States, on the return of a vessel from a foreign voyage, to discharge the crew before unlading the vessel, and to employ other persons to perform that service. Where such a custom is uniform and long established, it would seem that the seamen are not bound to remain and assist in unloading; at least, unless they are directed to remain by the captain.[3]

It has been seen that where seamen are bound to remain and assist in discharging the cargo, yet a desertion after the voyage is ended, but before the cargo is discharged, is not punished by the same forfeiture of wages, as a desertion during the voyage. (See page 43.)

Punishment of Seamen for Misconduct, &c.—It has been seen in what cases the misconduct of seamen is visited by a forfeiture of the whole or part of their wages. (See *Chapter V. on Forfeiture of Wages.*)

The master has power to punish any seaman who disobeys the lawful orders and discipline of the ship, or who is guilty of other gross misconduct. This power is given to the master to enable him to maintain his command, and to preserve discipline and subordination on board his vessel. He may confine the guilty seaman on board the ship by putting him in irons, or otherwise; and, in extreme cases, he may place him in a foreign jail; but this last punishment can only be inflicted in cases of necessity, such as will hereafter be stated.[4]

(1) 2 Hagg. 243; 1 Pet. Adm. 251.—(2) 1 Sumner, 373.—(3) Ware's Reports, 454.—(4) Gilpin's Reports, 31.

This power to punish an offending seaman must be exercised with moderation and humanity. The punishment inflicted must not be excessive, but must be proportioned to the nature of the offence, and the urgency of the occasion, and administered in a proper manner.[1]

If unnecessary severity or cruelty is used, or if the punishment is disproportioned to the offence, the seaman may receive compensation in damages on his return to port. And if, in administering merited punishment, the officers proceed with unnecessary harshness of manner, which causes unintentionally a severe injury to the man, as the dislocation of an arm, they will be liable for the actual damage which this occasions him.[2]

But where the punishment is merited, it must be clearly excessive to entitle the seaman to damages. It cannot be expected that masters can mete out with nice discrimination, the exact amount of punishment which each case requires.[3]

The punishment may be inflicted immediately upon the commission of the offence, or it may be delayed until the master has considered what punishment would be most suitable. Perhaps it is better for the master, where the case will permit of it, to delay punishment until he has had time to thoroughly investigate the matter, and to consult his officers; this is not, however, necessary in any case, and the nature of some offences requires that punishment should be immediate.[4]

Sometimes the master may be justified in inflicting punishment, though the offence which was the immediate occasion of the punishment, is trivial, as where the seaman is in the habit of committing similar offences.[5]

The master must not, however, punish the seaman for offences for which he has been pardoned; and where considerable time has elapsed, the seaman may presume that his offence has been pardoned, and the master will not in such case be justified in punishing him for the offence, or in making it an excuse for punishing another offence, so trivial in its nature as not in itself to warrant punishment.[6]

In punishing a seaman, no particular mode is prescribed by law. There must not be any cruelty, or unnecessary severity exercised; and any punishments which are unjust or unusual, are improper. In general, no mode of

(1) 1 Story, 91.——(2) Ware's Reports, 53.——(3) Ibid. 219.——(4) 15 Mass. 365.——(5) 1 Hagg. 271.——(6) Ibid.

punishment must be employed that would be permanently injurious to the health or constitution of the seaman; but cases of necessity may occur to justify the use of them.[1]

The right to punish, as has been before stated, is conferred upon the master, that he may thereby be enabled to establish good discipline and good conduct on board; the punishment must therefore be administered in the proper mode, at the proper time, and in the proper degree to promote this, and this is the only general rule that can be laid down.

The habit of kicking and cuffing seamen, is calculated rather to irritate them, than to impress them with a sense of duty, and is improper. And though a master might be excused for knocking a seaman down, under the impulse of sudden passion, from provocation by language of gross insolence and insubordination, or defiance, yet if he follows this act up by other passionate acts, such as kicking and beating the fallen seaman, he would not be justified, for it is not such a punishment as the law allows; it is not the proper way to punish a man, nor is it calculated to promote good discipline or good conduct.[2]

By a Law passed September 28, 1850, *Flogging* in the navy, and on board vessels of commerce, is *abolished*, from and after the passage of the act.

As a protection to the seamen against the cruelty of the officers, it is provided by an Act of Congress, that if any master or other officer of any American vessel, shall from malice, hatred, or revenge, and without justifiable cause, beat, wound, or imprison, any one or more of the crew, or withhold from them suitable food and nourishment, or inflict upon them any cruel and unusual punishment, every person so offending, shall be punished by fine not exceeding one thousand dollars, or by imprisonment not exceeding five years, or by both, according to the nature and aggravation of the offence.[3]

Cases may occur, such as mutiny or revolt, or where the strictest obedience is necessary to the very safety of the ship, in which the master may be justified in resorting to any mode of punishment, even to the taking of life. These cases will be now stated.

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(1) 1 Wash. C. C. 316.——(2) 1 Story 91.——(3) Act 1835, ch. 313, sec. 3.

Use of Dangerous or Deadly Weapons in Punishment.—Deadly weapons can only be used in case of mutiny, or where a mutiny may be reasonably apprehended. They can never be used for the punishment of a past offence. Neither can they be used to punish the disobedience of one man, where the rest of the crew are in a state of quiet and subordination, as the master can in such case inflict some other punishment, and dangerous weapons are not to be used except in case of necessity.[1]

Imprisonment of Seamen in Foreign Jails.—Masters of vessels have authority to confine seamen in prison in a foreign port, for offences and misconduct, in extreme cases, and where the proper correction or punishment cannot be effectual on board.

The authority arises, and can be exercised only in cases of flagrant offences, where there is a positive necessity for removing the party offending from the ship to some place of safety on shore. Thus where there would be danger in keeping the offender on board; or where there is a mutiny in port, with an intent to murder the officers, or to embezzle the cargo, and the mutineers cannot be suffered to remain on board, but at the imminent hazard of the lives of the officers, and the property on board; in these, and in cases of like nature, the master would be justified in imprisoning the offenders.[2]

The master cannot imprison a seaman, intending merely to punish him, and then to let him out, and discharge him from the ship's service. When he imprisons him, it must be for the purpose, either of receiving him back to the ship again, after sufficient punishment, or of sending him home in irons for some crime.[3]

The imprisonment of a seaman is not justifiable where he can be safely and effectually punished on ship-board; neither is an imprisonment of a sailor for a *past* offence justifiable. The right to imprison a sailor in a foreign jail, is one which the courts do not encourage, and is to be exercised rather as a means of safety than of discipline. A learned judge in speaking upon this subject said: "The notion so commonly entertained, that a master may, at his pleasure, for slight offences, imprison his seamen in a foreign jail, is utterly unfounded in law. It is high time that

(1) Bee's Reports, 248.—(2) 5 Mason, 192; Gilpin's Reports, 31.—(3) Ibid.

masters should understand, that they are criminally liable for such wanton abuses of authority."[1]

It has already been seen, that if a sailor is imprisoned for misconduct, his wages are not forfeited during the time he is in prison. (See page 46.)

Mate cannot punish the Seamen.—When the master is on board, neither the mate, nor any other officer, has any right to inflict punishment without the master's assent or direction, unless in case of necessity.

Cases indeed may, and do often arise, where instant obedience to the orders of the mate is necessary; such as orders to take in sail in a sudden squall, or to cut away the rigging or spars, or to go aloft on a sudden and emergent duty, where the mate may instantly enforce obedience, by the application of positive force, and indeed, of all the force required to produce prompt obedience. But, then, every such case is justified only from necessity, and the force so used, is not so much a punishment, as it is a means of compelling the performance of a pressing duty, admitting of no delay. If, however, the circumstances are not urgent and pressing, it is the duty of the mate or other officers to consult the master as to the infliction of punishment.[2]

Discharge of Seamen for Misconduct.—The misconduct of a seaman may be such as to justify his discharge by the master. Thus, where a seaman persists in a mutinous and disobedient course of conduct; or where he is guilty of gross crimes and dishonesty; or if he is an habitual drunkard, and steals the ship's stores; in these and the like cases, he may be discharged.[3]

The master is not justified in discharging a seaman for slight offences, nor for a single offence, unless of a very aggravated character. The policy of the law discourages the discharge of seamen in foreign ports, and it must be a continued course of gross misconduct, which will warrant a master in discharging them.[4]

It has been already seen in what cases seamen are entitled to be pardoned for their misconduct, by offering amends, &c. (See page 45.)

When the wages of seamen are forfeited by their misconduct, has been already stated. (See page 45.)

(1) Gilpin's Reports, 31 ——(2) 2 Story, 120.——(3) Ware's Reports, 65; 1 Pet. Adm. 164.——(4) Ibid.

The protection which the law affords to seamen who are wrongfully discharged during the voyage has also been stated in another part of this work. (See page 21.)

Disrating or Degrading Seamen.—Where a seaman ships for a particular service, and is found to be unqualified for that duty; the master is authorized to put him to a different service, and may make a reasonable deduction from his wages; it must, however, be clearly apparent that he is not capable to perform the duties for which he ships.[1]

Drunkenness and dishonesty are held to be sufficient causes for degrading a steward and putting him before the mast. But the drunkenness must be habitual; a single act of intemperance is not sufficient.[2]

Where the master appoints a seaman to act as mate of the vessel, during the voyage, he may remove him for incompetency, and the seaman will not be entitled to any other wages than those originally contracted for.[3]

CHAPTER VIII.

CRIMES, HOW PUNISHED.

Revolt and Mutiny.—Endeavor to make a Revo t or Mutiny.—Confining the Master.—Piracy and Crimes punishable by Death.—Casting away, Burning, or otherwise Destroying the Ship.—Attempt to commit Piracy, and furnishing Pirates with provisions, and trading with them.

Revolt and Mutiny.—It is provided, by an Act of Congress, that if any one or more of the crew of any American vessel shall, on the high seas, or any other waters within the admiralty and maritime jurisdiction of the United States, by force or fraud, threats or intimidations, take the command of the vessel from the master or other lawful commanding officer, or deprive him of his authority and command on board, or resist, or prevent him in the free and lawful exercise thereof, or give the authority and command to any other person not lawfully entitled thereto, every person so offending, and his aiders and abettors, shall be deemed guilty of a revolt, or mutiny, and felony; and shall be pun-

(1) Ware's Reports, 109.—(2) Ibid.—(3) Gilpin's Reports, 83.

ished by a fine not exceeding two thousand dollars; and by imprisonment and confinement to hard labor not exceeding ten years, according to the nature and aggravation of the offence.[1]

It is not necessary to constitute a revolt, that the master should have been deprived of the command, and another placed in his stead. If the crew compel the master against his will, by threats or otherwise, to navigate the ship, or manage her concerns, according to their own directions, and prevent him from the free exercise of his own judgment, that would be a revolt. In short, whenever, by the acts of the crew, the authority of the master in the free navigation or management of the ship, or in the free exercise of his rights and duties on board, is entirely overthrown, and there is intentionally caused by such acts a suspension of his power of command, it is a revolt of the crew.[2]

Endeavor to make a Revolt or Mutiny.—It is further provided, that if any one or more of the crew of any American vessel on the high seas, or any other waters within the admiralty and maritime jurisdiction of the United States, shall *endeavor* to make a revolt or mutiny on board the vessel, or shall combine, conspire, or confederate with any other persons on board, to make such revolt or mutiny, or shall solicit, incite, or stir up any others of the crew to disobey or resist the lawful orders of the master or other officer of the vessel, or to refuse and neglect their proper duty on board, or shall unlawfully *confine* the master or other commanding officer, every person so offending shall be punished by a fine not exceeding one thousand dollars, or by imprisonment not exceeding five years, or both, according to the nature and aggravation of the offence.[3]

Actual disobedience to some order given is not necessary to constitute the offence of an endeavor to make a revolt. If the crew have combined together to disobey orders and to do no duty, the offence is complete by such combination, although no orders have been subsequently given.[4]

A mere disobedience of orders by a seaman without encouraging, or aiding, or co-operating with others in the same act, is not an endeavor to commit revolt. An endeavor to commit revolt may be complete by stirring up, encouraging, or combining with any one or more of the crew

(1) Act 1835, ch. 313, sec. 1.—(2) 5 Mason, 272.—(3) Act 1835, ch. 313, sec. 2.—(4) 5 Mason, 404.

to produce a deliberate disobedience to any one lawful order of the master or other officers; for to this extent it is an endeavor to commit a mutiny, and to overthrow the lawful authority of the master and officers. But there must be a clear intent to produce such revolt; and not merely gross or insolent language used by the party, which may, undesignedly, encourage others to such disobedience.[1]

It is not necessary, to constitute this offence, that there should have been any previous concert or understanding between those engaged in it. However sudden may be the occurrence, or unexpected the occasion, of such disobedience, or resistance, those who take part in it, whether by words or by deeds, by direct acts of aid or assistance, or by encouragement or incitement, are guilty of the offence. Thus, if the master of the ship should direct a seaman to be punished reasonably for his misconduct, and the crew should interfere to prevent the infliction of the punishment by attempting a rescue; or by other acts of violence; or by intimidations and threats; such acts would amount to an endeavor to commit a revolt. They would operate directly to suspend the exercise of the lawful authority of the master on board of the ship. And those of the crew, who should stand by, exciting or encouraging those who were actually engaged in such illegal interference, would be equally guilty with the immediate actors.[2]

If the crew of a ship, having signed shipping articles for the voyage under a particular master, who is succeeded by a new master, on account of the sickness of the former, or for any other reasonable cause, combine together to refuse all duty on board, and to refuse obedience to the new master, that is an endeavor to make a revolt.[3]

But if a person substituted as master is grossly incompetent to the duties of his station, from want of due skill or from grossly bad habits; or from profligate and cruel behavior, that may furnish a suitable excuse for a refusal to do duty or to remain by the ship.[4]

An endeavor on the part of the crew to compel the master to return into port on account of the unseaworthiness of the vessel, if they act in good faith, and the vessel is actually unseaworthy, is not an endeavor to commit revolt. So, it is not an endeavor to make a revolt, if they act in

(1) 1 Sumner, 168.— (2) 1 Sumner, 448.—(3) 5 Mason, 272.—(4) 2 Sumner, 582.

good faith and upon reasonable grounds, and apparent unseaworthiness, and it is doubtful whether the vessel is unseaworthy or not. But if the vessel, in such case, is clearly seaworthy, it is an endeavor to revolt.[1]

Confining the Master.—Any seaman who unlawfully confines the master, or other officer commanding, is punished in the same manner as for an "endeavor to make a revolt."

Confinement is not limited to mere personal restraint by seizing the master, and preventing the free movements of his body, nor to imprisonment in any particular place, as locking him in a state-room, or cabin. It is equally a confinement to prevent him from free movements about the ship, by force or intimidation, as by limiting him to walking on a particular part of the deck by terror of bodily injury, or by present force. If he is surrounded, and prevented from moving where he pleases, according to his rights or duty as a master, under threats of force, or if he is restrained from going to any part of the ship, by an avowed determination of the crew, or of any part of them, to resist him, and to employ force adequate to prevent it, these fall within the meaning of confinement.[2]

And, if the master does, in fact, go unmolested to every part of the ship whenever he pleases, yet if he is compelled, by a regard for his own safety, to go armed, and is restrained from performing the duties of his station, by such mutinous conduct of his crew, as might intimidate a firm man; this would amount to a confinement.[3]

One who joins in the general conspiracy, and by his presence countenances acts of violence, but who does not individually use force or threats, to compel the master to resign the command of the vessel, is guilty of the offence of confining the master.[4]

It is not necessary that the confinement should be for any particular length of time, to constitute the offence; if it was unlawful, the crime was committed, whether the confinement was for a minute, or for an hour, or a day.[5]

But if a seaman is suddenly seized by the master, and, without any intention of restraining him of his liberty, from the mere impulse of nature, he takes hold of the master, to prevent any injury, for an instant only, so that the act may

(1) 2 Sumner, 13.—(2) 4 Mason, 105.—(3) Pet. C. C. R. 213 —(4) Ibid. 118.—(5) Ibid.

be fairly deemed involuntary, it could hardly be deemed a confinement. But if the seizing by the master is justifiable, and he does not exceed the punishment, which he is by law entitled to inflict, then, the seaman cannot restrain him, but is bound to submit; and if he does hold the master in personal confinement or restraint, the offence has been committed.[1]

Every confinement is not an offence. It must be an unlawful confinement or restraint. If the master is about to do an unlawful act, and especially to commit a crime, a seaman may lawfully confine or restrain him. So the seaman may confine the master in justifiable self-defence. If the master assault him without cause, he may restrain the master with so much force, and so long, as is necessary for this purpose. So a master may so conduct himself, as to justify the officers and crew in placing restraint upon him, to prevent his committing acts, which might endanger the lives of all the persons on board.[2]

It must, however, be an extreme case, that will justify the confinement of the master; as where he makes a gross assault upon a seaman without the slightest provocation; or where in punishing a seaman for an offence, he assaults him with a dangerous weapon; or where the lives of some or all of the crew will be endangered if he is suffered to go at large. And in a case where a confinement of the master is justifiable, it must cease the moment the occasion ceases.[3]

Piracy and Crimes Punishable with Death.—If any person shall, on the high seas, commit the crime of robbery in or upon any ship, or upon any of the ship's company, or upon the cargo; or if any captain, or seaman of any ship, shall run away with the ship, or any goods to the value of fifty dollars; or shall yield up the ship voluntarily to any pirates; or if any seaman shall lay violent hands upon his commander, to hinder and prevent his fighting in defence of his ship, or property; such act is piracy and the person guilty of it shall suffer death.[4]

If any person engage in a piratical cruise, or enterprise, or being of the crew of any piratical ship, shall land from the ship, and commit robbery on shore, he will be deemed a pirate, and must suffer death.[5]

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(1) Pet. C. C. R 213.—(2) Ibid. 213.—(3) Ibid.—(4) Act 1790, ch. 36, sec. 8; Act 1820, ch. 113.—(5) Act 1820, ch. 113.

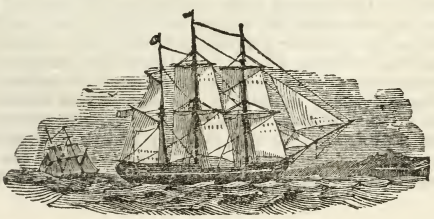
So it is piracy to be engaged in kidnapping, on any foreign shore, any negro or mulatto, or to decoy, or receive such negro or mulatto on board of any vessel, with intent to make him a slave; and any person guilty of this, or voluntarily employed on board of any vessel transporting them, will be punished with death.[1]

Casting away, Burning, or otherwise Destroying a Ship. — Any person, not being an owner, who shall on the high seas wilfully and corruptly cast away, burn, or otherwise destroy any American vessel to which he belongs, or procure the same to be done, shall suffer death,[2]

Attempt to commit Piracy, and furnishing Pirates with Provisions, and Trading with them.— If any person upon the high seas shall by surprise, or by open force or violence, attack any vessel intending to plunder her, he and his aiders or abettors, shall be punished by fine, not exceeding five thousand dollars, and by imprisonment and confinement to hard labor, not exceeding ten years, according to the aggravation of the offence.[3]

If any seaman endeavors to compel any commander, officer, or seaman, to yield up, or run away with any ship or vessel, or with any goods, or to turn pirate, or in any wise trade with any pirate, knowing him to be such; or shall furnish such pirate with any ammunition, stores or provisions of any kind, or shall fit out any vessel with a design to trade with or supply, or correspond with any pirate or robber upon the seas; or if any person shall in any way consult, combine, confederate, or correspond with any pirate or robber on the seas, knowing him to be guilty of piracy or robbery; such person shall be imprisoned not exceeding three years, and fined not exceeding one thousand dollars.[4]

(1) Act 1790, ch. 36, sec. 8; Act 1820, ch. 113, sec. 4, 5.——(2) Act 26th March, 804.——(3) Act 1825, ch. 276, 6.——(4) Act 1790, ch. 36, sec. 12.



COASTER'S GUIDE.

[Laws of the United States, of 1790, 1793, 1819, and 1822.]

Vessels employed in the Coasting Trade and Fisheries must be Enrolled and Licensed.—To entitle any vessel of twenty tons or upwards, to the benefits and privileges of vessels employed in the coasting trade or fisheries, she must be enrolled and licensed.

If the vessel is under twenty tons, she need not be *enrolled;* but she must be *licensed.* But vessels of twenty tons or upwards must be enrolled as well as licensed.

What Vessels are entitled to be Enrolled and Licensed.—Those vessels only are entitled to be enrolled and licensed which are built in the United States, and owned wholly by citizens, and commanded by a citizen, and employed in the coasting trade and fisheries; and they enjoy the privileges which an enrolment and license confer no longer than they continue to be wholly owned and commanded by citizens.

Enrolment of Registered Vessels, and those not Enrolled.—The collector may enrol and license any vessel that may be registered, upon such registry being given up, or register any vessel that may be enrolled, upon such enrolment and license being given up.

When the vessel is in any other district than the one to which she belongs, the above exchanges can only be made by the collector of such district, on the application of the master, and upon his taking an oath or affirmation that, according to his best knowledge and belief, the property remains as expressed in the register or enrolment proposed to be given up.

The new enrolment and license, or the new register thus obtained by exchange in any other than the district to which the vessel belongs, must, within ten days after the arrival of the vessel within the district to which she belongs, be delivered up by the master to the collector of the said district, and be by him cancelled. And if the master neglects to deliver the said register, or enrolment and license, within ten days, he forfeits one hundred dollars.

How a License is obtained.—In order to get any vessel licensed for carrying on the coasting trade or fisheries, the husband or managing owner, together with the master, with one or more sureties, to the satisfaction of the collector granting the same, shall become bound to pay to the United States, if such vessel be of the burthen of five tons and less than twenty tons, the sum of one hundred dollars; if twenty tons and not exceeding thirty tons, the sum of two hundred dollars; if above thirty tons and not exceeding sixty tons, the sum of five hundred dollars; if above sixty tons, the sum of one thousand dollars, in case it shall appear, within two years from the date of the bond, that such vessel has been employed in any trade, whereby the revenue of

the United States has been defrauded, during the time the license granted to such vessel remained in force.

The master of such vessel must also swear, or affirm, that he is a citizen of the United States, and that such license shall not be used for any other vessel, or any other employment, than that for which it is specially granted, or in any trade or business whereby the revenue of the United States may be defrauded.

If the vessel is under twenty tons burthen, the husband or managing owner must swear or affirm that she is wholly the property of citizens of the United States. This oath of citizen ownership, is taken when the enrolment is granted, where the vessel is of twenty tons burthen or upwards.

These steps having been taken, the collector of the district whereto such vessel may belong must, upon the payment of a duty of six cents per ton, grant a license in the form directed by law.

Time for which a License is Granted, and when it becomes void by Change of Owners, &c.—A license is usually granted for the term of one year. The vessel, while the license continues to run, must continue to be owned by the same person, and to be of the same description, and employed in the same business, as are stated in the license; otherwise the license becomes void.

Vessel found with a Forged or Altered License, &c. Forfeited.—If any vessel is found with a forged or altered license, or making use of a license granted for any other vessel, such vessel, together with her tackle, apparel, and the cargo found on board, shall be forfeited.

Vessel found employed in another trade than that for which she is Licensed, is Forfeited.—If any licensed vessel is employed in any other trade than that for which she is licensed, she, together with the cargo found on board, (if it belongs to the master, ship-owner or seamen,) shall be forfeited.

Consequence of Sailing without a License.—Vessels not enrolled and licensed, or if under twenty tons, not licensed, (other than such as are registered,) found trading between district and district, or between different places in the same district, or carrying on the fishery, pay the same fees and tonnage in every port at which she may arrive, as foreign vessels. But if such vessels have on board distilled spirits, or any articles of foreign growth or manufacture, other than sea stores, they are, together with their tackle, apparel, and furniture, and the lading found on board, *forfeited.*

When License Expires at Sea.—But if a vessel is at sea at the expiration of the time for which the license was given, and the master shall swear, or affirm, that such was the case, and shall, also, within forty-eight hours after his arrival, deliver to the collector of the district in which he first arrives, the license which had expired, then the vessel shall not be forfeited, nor liable to pay fees and tonnage as a foreign vessel, otherwise she will be.

Enrolment and License must be given up before the vessel proceeds on a Foreign Voyage.—If a vessel, enrolled or licensed, proceeds on a foreign voyage without giving up her enrolment and license to the collector of the port from which she is about to proceed, and being duly registered, such vessel, together with the goods imported, is forfeited.

If the port from which such vessel is about to sail, be not within

the district where she was enrolled, the collector must give to the master a certificate, specifying that the enrolment and license has been received by him, and the time when it was received; which certificate must afterwards be delivered by the master to the collector who granted the enrolment and license.*

License, when to be given up.—The license granted to any vessel must be given up to the collector of the district who granted the same, within three days after the expiration of the time for which it was granted, in case the vessel is then within the district; or, if she be absent at the time, within three days from her first arrival within the district; or, if she be sold out of the district, within three days after the arrival of the master within any district, to the collector of such district, taking his certificate therefor; and, if the master thereof shall neglect or refuse to deliver up the license, he forfeits $50; but if such license has been previously given up to the collector of any other district, and a certificate therefor be produced by the master, or if such license be lost, or destroyed, or unintentionally mislaid, so that it cannot be found, and the master makes oath or affirmation thereof, and that the same, if found, shall be delivered up, then the above penalty is not incurred.

When a License is Lost, how another can be obtained.—And if such license is lost, destroyed, or unintentionally mislaid, before the expiration of the time for which it was granted, upon the like oath or affirmation (stated above) being made by the master, the collector must license such vessel anew.

License may be returned.—It is lawful for the owner of any licensed vessel, to return such license to the collector who granted the same, at any time within the year for which it was granted, who thereupon licenses such vessel anew, and in case the term for which the former license was granted has not expired, an abatement of the tonnage of six cents per ton shall be made, in the proportion of the time so unexpired.

Name of the Vessel must be painted on the Vessel's Stern.—Every licensed vessel must have her name, and the port to which she belongs, painted on her stern, on a black ground, in white letters of not less than three inches in length, and if found without such painting, the owner is liable to pay $20.

Change of Master must be Reported.—When the master of any licensed vessel, (ferry boats excepted) is changed, such change must be reported by the new master, or, in his absence, by one of the owners, to the collector of the port where the change is made; or if there be none, then at the port where the vessel may next arrive; and oath or affirmation must be made by the person thus reporting the change, that the new master is a citizen of the United States, and that the vessel shall not be employed in a manner to defraud the revenue, while the license continues in force; whereupon the collector must endorse such change on the license, with the name of the new master.

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* No vessel is liable to be seized and forfeited as above, unless she has actually *broken ground* with an intention to commence such a voyage.—1 *Gall* 43.

The proceeding to a foreign port, if within the customary range of a fishing voyage, for the purpose of seeking employment in the fisheries, and not to engage in trade, is not a violation of the above act, and will not subject the vessel to forfeiture.—1 *Gall* 142.

And when any change of master shall happen, and such change is not reported, and the proper endorsement made as above, such vessel found engaged in the coasting trade or fisheries, shall pay the same fees and tonnage as a *registered* vessel, and the new master shall forfeit $10.

Master must exhibit his Enrolment and License when required.—It is lawful at all times, for any officer concerned in the collection of the revenue, to inspect the enrolment or license of any vessel, and if the master does not exhibit the same when requested by such officer, he shall pay $100.

The Three Great Coasting Districts.—For the more convenient regulation of the coasting trade, the seacoast and navigable rivers of the United States are divided into *three great districts;* the first includes all the districts on the seacoast and navigable rivers, between the *eastern limits* of the United States and the *southern limits of Georgia;* the second includes all the districts on the seacoast and navigable rivers, between *the river Perdido* and the *western limits* of the United States; and the third includes all the ports, harbors, seacoasts, and navigable rivers, between the *southern limits of Georgia and the river Perdido.*

Master may Trade between places within either of the Great Districts, without entering and clearing, unless, &c.—Licensed coasters may carry on such trade within the limits of either of the great districts, or between a state in one, and an adjoining state in another great district, without being obliged to clear or enter at the custom-house, *provided he has not on board distilled spirits* exceeding 500 *gallons; wine, in casks,* exceeding 250 gallons, *or in bottles* exceeding 100 dozen; *sugar,* in casks or boxes, exceeding 3000 pounds; *tea,* in chests or boxes, exceeding 500 pounds; *coffee,* in casks or bags, exceeding 1000 pounds; *or foreign merchandize,* in packages as imported, exceeding in value $400, or goods, wares or merchandize of foreign growth or manufacture, or both, whose aggregate value exceeds $800.

The master of a licensed vessel, having on board spirits, &c., exceeding in amounts those above named, must make out duplicate manifests of the whole of the cargo, specifying in such manifests, the marks and numbers of every cask, bag, box, chest, or package, containing the same, with the name and place of residence of every shipper and consignee, and the quantity shipped by and to each; and if there is a collector or surveyor within five miles of the port, the master must have the manifests (one of which he is to retain), certified by him, and must also obtain a *permit* from him. And if the master of a vessel, laden as above, sails without having made out and signed duplicate manifests of the cargo, and also, if a collector or surveyor resides within five miles of the port, without having delivered the same to him, and obtained a permit, as herein required, he shall pay $100.

The certified manifest, or if no collector or surveyor reside within five miles of the port of lading, then the duplicate manifests referred to above, must, previously to unlading any part of the cargo, be delivered to the collector of the port of unlading, if any such resides within five miles of the same; if not, the master may proceed to discharge his cargo, but must deliver to the collector, or surveyor, of the first port at which he may arrive, within twenty-four hours after his arrival at the same, the manifests, upon which must be noted the times when,

and the places where, the goods have been unladen, to which he must make oath. If a master neglects or refuses to deliver his manifest, as above required, he shall pay $100.

Loss of Manifest.—If the master has lost or mislaid the certified manifest, or permit, he must give a bond to the collector of the district where he shall arrive, for the payment of the duties on such foreign goods, or distilled spirit, within six months, in the same manner as though they were imported from a foreign country. But such bond shall be cancelled, if a certificate from the collector or surveyor of the district from which the vessel sailed, that such goods were legally exported from such district, be delivered to the collector taking the bond, within the time limited for its payment.

Master cannot trade from one to another Great District, without Entering and Clearing, and having on board a proper Certified Manifest.—The master of any vessel licensed for carrying on the coasting trade, bound from one *great district* to another, (except it be from a state in one to an *adjoining* state in another great district), must make and deliver to the collector of the port from which he is to sail, duplicate manifests of all the cargo on board, or if there is no cargo, he must so certify; and if there is any distilled spirits, or articles of foreign growth or manufacture on board, other than sea-stores, the master must specify in such manifest, particularly, the marks and numbers of every cask, bag, box, chest, or package containing the same, with the name and place of residence of every shipper and consignee of such distilled spirits, or goods of foreign growth or manufacture, and the quantity shipped by and to each, and swear that such foreign goods were, to the best of his knowledge and belief, legally imported, and the duties thereon paid or secured, or if spirits distilled within the United States, that the duties thereupon have been duly paid or secured. If the master fails to do this, and the vessel departs, having on board distilled spirits or foreign goods, he forfeits $100; if she departs laden with goods of the growth or manufacture of the United States, or without a cargo, he forfeits $50.

The master must deliver this certified manifest of the cargo, (if there be any,) if not, then the certificate to that effect, to the collector or surveyor nearest to the port at which he arrives, within twenty-four hours after his arrival, if such collector or surveyor lives within five miles, if not, then within forty-eight hours; and the master must make oath that the goods specified in such manifest are all that are then or have been, on board during the voyage; whereupon the collector must grant a permit for unlading the whole or part of the cargo, as the master may request. If only a part of the distilled spirits or foreign goods is landed, the collector must endorse on the manifest what articles are to be landed, and also his permission for the vessel to proceed with the remainder to her port of destination. If the master neglects or refuses to deliver the manifest as above required, he forfeits $100 and any distilled spirits, or foreign goods, found on board or landed without being certified as herein required, are forfeited, and if they exceed in value $800, the vessel is also forfeited.

A Coasting Vessel must always have a Manifest on Board.—The master of a coasting vessel must always have a manifest of the cargo laden on board, whether it is of such a nature as to require him to *enter* and *clear* at the custom-house or not; and if any part of his

cargo consists of distilled liquors or foreign goods, he mus specify their marks and numbers, with the name of the shipper and consignee of each; which manifest must be exhibited by him for the inspection of any officer of the revenue, when required by such officer to do so; and he must also inform such officer, when asked, whence such vessel last sailed, and how long she has been in port. If the master is not provided with a manifest as herein required, and his vessel is wholly laden with goods of the growth and manufacture of the United States, (distilled spirits excepted) he forfeits $20; if any distilled spirits or foreign goods are on board, except sea stores, he forfeits $40; and if he refuses to answer the questions above named, he forfeits $100. And if any foreign goods or distilled spirits, belonging to the master, owner, or mariner of such vessel, are found on board, which are not included in the manifest exhibited by the master, they shall be forfeited.

Master must Report himself upon entering a Port.—Upon putting into a port, other than a port to which he was bound, the master must, within twenty-four hours after his arrival, report to a custom-house officer, if any reside there, the arrival of the vessel, the name of the place he came from, and where he is bound, with an account of his lading. If he neglects or refuses to do this, he forfeits $20.

Cargo never Forfeited, if it does not belong to the Master, Shipowner, or Mariners, unless, &c.—In all cases where the whole, or any part of the cargo, on board any vessel belongs, *bona fide*, to any person other than the master, owner, or mariners of the vessel, and upon which the legal duties have been paid or secured, it is exempted from any forfeiture heretofore named in this chapter.

Rights and Duties of Masters engaged in the Coasting Trade.—The most important duties which devolve upon masters employed in the coasting trade, are those which are imposed upon them by the revenue laws of this country. These duties have already been considered in examining the statute laws relating to the enrolment and licensing of vessels, entering and clearing, procuring manifests, &c., all of which should be carefully read by the master.

The masters and owners of coasting vessels are liable as common carriers for the safety of the cargo, and if any loss or damage happen to it, they will be liable, unless it was occasioned by the perils of the seas, the act of God, or public enemies. Whatever injury or loss, therefore, is occasioned by bad stowage, exposure, theft, embezzlement, or by damage done by rats, &c., is to be borne by the master and owners.

One of the most important duties devolving upon the master, is the stowage of the cargo. If any damage is occasioned by bad stowage, (unless in a case where the owner appointed his own stower, or where the goods were stowed according to his directions,) the master is liable.

The master must stow the goods *under deck*, unless he is authorized to carry them on deck by the owner, or by custom. To establish a custom to carry goods on deck, it will not be sufficient for the master to show that the act has been frequently done; but he must show that the custom has been so long established, and is so uniform and so well known, that it is fair to presume the parties had it in view, when the agreement was formed.

This subject of stowage has been elsewhere considered. (See Ap

pendix, article " Dunnage of Vessels.) The nature and kinds of *dunnage* to be used in stowing goods will be there stated.

It has been already seen that, in all coasting voyages from one State to any other than an adjoining State, the master, before proceeding on the voyage, must cause all his crew to sign proper shipping articles, and that if he does not, any sailor not signing, may leave at any time, and demand the highest rate of wages paid to any sailor shipped for the voyage, or the sum agreed to be given him at his shipment. (See page 9.)

[If a seaman is shipped for a general coasting and trading voyage, without any limitation of time, or any final *terminus* of the voyage, either party, the master or seaman, may put an end to the contract at pleasure, provided it is not done at a time particularly inconvenient to the other party.—2 *Gall.* 477.]

The relation of the master to his crew has already been considered under the " RIGHTS OF SEAMEN," which should be carefully read.

For further information respecting his *rights* and *duties*, the master is referred to the portion of this work devoted to that subject.

FISHERMAN'S GUIDE.

Laws of U. S. of 1793, 1813, 1824, 1828, 1836, 1846; and Convention with Great Britain, 1818.]

Enrolment and Licensing of Fishing Vessels.—Vessels engaged in the fisheries must be enrolled and licensed, in the same manner as coasting vessels. The manner of enrolling and licensing fishing, as well as coasting vessels, has been already stated.

Licensed Fishing Vessel must obtain Permit if she intends to Trade at a Foreign Port.—When the master of any vessel licensed for carrying on the fishery, intends to touch and trade at any foreign port or place, he must obtain permission from the collector of the district from which the vessel sails, and the master must deliver like manifests, and make like entries, both of the vessel and cargo, and within the same time and under the same penalties, as are provided by law, for vessels arriving from a foreign port. And if any licensed fishing vessel is found within three leagues of the coast, with goods of foreign growth or manufacture, exceeding the value of $500, without having such permission, the vessel, together with the foreign goods imported therein, shall be subject to forfeiture.*

* A vessel licensed for carrying on the fisheries, is liable to forfeiture, for a single act of trading not authorized by the license.—*Ware's Reports*, 21.

Bounty allowed to Vessels engaged in the Bank and other Cod Fisheries.—Vessels engaged in the Bank and other Cod Fisheries are allowed a *bounty* by government. To entitle a vessel to the bounty, she must have actually been employed therein at sea, at least four months, in the fishing season, that is, between the *last day of February* and the *last day of November* in each year. A vessel of more than five and not exceeding thirty tons burthen, receives $3.50 for each ton of her measurement, to be ascertained by her enrolment. If the vessel is over thirty tons burthen, she receives $4 per ton. If, however, a vessel of over thirty tons burthen, having had a crew of not less than ten persons, has been actually employed in the cod fishery at sea, for the term of *three and one-half months*, but less than four months of such season, she will be entitled to a bounty of $3.50 per ton.

No vessel can receive more than $360 as an allowance for bounty for any one year.

To entitle a Vessel to the Bounty, her Crew must sign Shipping Articles.—The master of any vessel of the burthen of twenty tons or upwards, engaged in the Bank or other Cod Fisheries, must, before proceeding on such fishing voyage, make an agreement in writing or in print with every fisherman who may be employed therein, (except only an apprentice or servant of himself or owner,) and in addition to such terms of shipment as may be agreed on, must, in such agreement, express whether the same is to continue for one voyage, or for the fishing season, and also that the fish or proceeds of such fishing voyage shall be divided among the fishermen in proportion to the quantities or number of fish which they may respectively have caught; which agreement must be endorsed or countersigned by the owner or his agent.

If the master of any fishing vessel, of twenty tons burthen and upwards, neglects to enter into such an agreement with the fishermen employed on board, the vessel will not be entitled to bounty.

How the Bounty is Divided when the Vessel is of Twenty Tons Burthen.—If the vessel is of twenty tons burthen or upwards, the owner is entitled to three-eighths of the bounty, and the other five-eighths is to be divided by him among the several fishermen employed in the vessel during the season, in such proportion as the fish they respectively have taken may bear to the whole quantity of fish taken on board during the season. Thus, suppose the fishermen's share of the bounty to be $60, and that one of them had caught one-tenth of all the fish taken, he would be entitled to $6.

Where the Vessel is less than Twenty Tons Burthen, &c.—Fishing vessels of more than five and less than twenty tons burthen, are entitled to a bounty of $3 50 per ton; only on condition that they land in the course of the season a quantity of fish, not less than twelve quintals for every ton of their admeasurement. The weight is to be ascertained when the fish are dried and cured fit for exportation.

This bounty, when thus received, is to be accounted for as part of the proceeds of the fares of such vessel, and divided between the fishermen employed on board, accordingly. An account of the weight, with the original adjustment and settlement of the fares among the owners and fishermen, together with a written account of the length, breadth, and depth of such vessel, and the time she has

actually been employed in the fishery in the preceding season, must, in all cases, be produced and sworn to before the collector, in order to entitle the owner to the bounty.

Fraud and False Swearing.—If at any time within one year after payment of the bounty, it shall appear that any fraud or deceit has been practised in obtaining it, the vessel upon which it shall have been paid, if found within the district to which she belongs, shall be forfeited; otherwise the owner, having practised such fraud or deceit, shall forfeit one hundred dollars. Any person making false declarations, in any oath required by this act, shall be deemed guilty of perjury, and punished accordingly.

Where the Vessel is Wrecked or Lost.—Where any vessel duly licensed for the cod fishery has completed her fishing term, and thereby becomes entitled to bounty, and afterwards, in returning home, is wrecked or lost, her owner and crew, on satisfactory proof being made to the comptroller of the treasury of the wreck or loss of such vessel, are entitled to the same bounty as would have been allowed had she returned to port.

Officers and three-fourths of the Crew must be American Citizens.—The bounty will not be paid unless the collector of the district is satisfied that the officers and three-fourths of the crew of the fishing vessel, were American citizens, or persons not subjects of any foreign prince or state.

Time when the Bounty is Payable.—The bounty is paid to the owner of the vessel on the last day of December of each year. It is paid by the collector of the port where the vessel belongs.

Penalty where any Fisherman Deserts or Neglects his Duty.—If any fisherman, who has engaged himself for a voyage, or for the fishing season, and signed the Shipping Articles referred to on page 7, deserts or absents himself from the vessel while the agreement remains in force, he is liable to the same forfeitures as deserting seamen in the merchant service. (See page 40.) And he may, in like manner, and upon like complaint and proof, be apprehended and detained. All costs of process and commitment, if paid by the master or owner, may be deducted from such deserter's share.

If any fisherman, shipped as above shall, during the voyage, refuse or neglect his proper duty on board, being thereto ordered or required by the master, or shall otherwise resist his just commands, to the hindrance or detriment of such voyage, he forfeits to the use of the owner of the vessel, his share of any bounty which may be paid upon the voyage, and is also liable for all damages which his disobedience has occasioned.

Fisherman's Lien upon the Vessel for his Pay, where the Owner Sells the Fish.—Where an agreement is made and signed for a fishing voyage, or season, and the fishermen deliver their fish to the owner of the vessel or his agent for cure, and such owner or agent sells them, the vessel is liable for the skipper's and every other fisherman's share for six months after the sale.

The owner or his agent must produce a just account of the sales and divisions of the fish, according to the agreement or contract; otherwise the vessel is answerable for what may be the highest value of the share or shares demanded. The owner or his agent,

however, may always offset any demands he may have against the fishermen for general supplies furnished for the fishing voyage, and for other supplies made to either of them.

Mackerel Fishery.

Vessels employed in this fishery must obtain a license in the same manner as those employed in the coasting trade. [See page 66]

Vessels, however, licensed for the mackerel fishery, may engage in any other fishery, without being forfeited, but they are not entitled to any bounty.

An act of trade by a licensed vessel, not authorized by her license, subjects her to forfeiture.

Pickled Fish — In lieu of the bounty heretofore authorized by law to be paid on the exportation of pickled fish of the fisheries of the U. States, there shall be allowed, on the exportation thereof, if cured by foreign salt, a drawback equal in amount to the duty paid on the salt and no more, to be ascertained under such regulation as may be prescribed by the Secretary of the Treasury.—*Act.* 1846.

ADMIRALTY COURT.

JOSHUA C. MAYO AND AL. V. JESSE SNOW, JR. AND AL.

This was a libel in personam against the owners of the Lydia & Polly for supplies furnished said vessel, including ship-chandlery and great and small generals for a codfishing voyage, and amounting to the sum of $414.12. The supplies were furnished at the request of the skipper of said vessel, by the libellants, in the month of April 1853. It appeared that in the month of February preceding, the skipper of said vessel took her of the owners upon a parole [*not written*] contract, for the fishing season, he to victual and man her, and to procure such persons as he saw fit to make the fish caught, allowing to the owners one quarter of the proceeds of the fish and oil taken, (after deducting the great general charge) together with three eighths of the bounty earned. That subsequently to the date of said contract, and the purchase of said supplies, codfishing articles in the usual form were signed by the skipper and crew of said vessel, and countersigned by the agent of the owners, in pursuance of the provisions of the United States Statute of 1813 It also appeared that it was the general usage in said business for the master, or skipper, to take his vessel and sail her for the season, after the term contained in the contract above mentioned. The fish caught being insufficient to pay the outfits, the libellants sought to recover of the owners.

Prior to the commencement of this suit, the owners tendered to the libellants the amount of their bills for ship-chandlery and great generals, which they refused to receive except on general account.

The Court ruled that the original taking amounted to a charter of said vessel, and that accordingly the skipper was alone liable for the small general bill; and that the articles signed did not affect that relation. Accordingly, a decree was entered for the libellants, with costs.

To this ruling exceptions were taken, and the case carried to the Circuit Court, Curtis J., and the decree of the District Court affirmed, with costs.

In another case, of a merchant vessel, where the libellant sought to recover of the general owners of the vessel, the price of supplies furnished to the master, the following opinion was delivered by Curtis, J., Circuit Court, March Term. 1852: "When a master hires a vessel *on shares*, under an agreement to victual and man her, and to employ her on such voyages as he thinks best, he thereby becomes the owner *pro hac vice* [for this turn] during such time as the contract exists, and he and not the general owner is responsible for necessary supplies."

The decree of the District Court was accordingly reversed, and the libel dismissed, with costs.

SHIPMASTER'S MANUAL.

CHAPTER I.

RIGHTS AND DUTIES OF MASTER.

Master's Relation to the Cargo.—The Bill of Lading.—Of the Preparation for the Voyage.—Of the Reception and Stowage of the Cargo.—Cargo must be Stowed under Deck.—Of the carriage of the goods: and first, of the Commencement of the Voyage; of the Course of the Voyage and the effect of Deviation; What will justify a Deviation; Stress of Weather; Want of Necessaries; Succoring Ships in Distress; for the purpose of Saving Property.—What is meant by the Course of the Voyage in relation to Deviation — Care to be taken of the Cargo during the Voyage.—Master liable for Loss occasioned by Embezzlement or the Negligence of the Crew.—The Master's duty to keep the ship Seaworthy during the Vogage.—The Master's duty in relation to the Cargo when the ship becomes Disabled and cannot proceed.—The Master's authority to Sell the Cargo or any part of it.—When the Master may make a Jettison of the Cargo —General Average —Of the Delivery of the Goods at the port of Destination.—The Master's duty as Consignee or Supercargo.

THE MASTER'S RELATION TO THE CARGO.—The master, as such, is the agent of the owners of the ship, and not of the owners of the cargo. Ordinarily his relation to the owners of the goods is merely that of a common carrier, and his contract is for the safe custody and conveyance of the goods, beyond the duties and authorities imposed upon him by this contract, he is to be regarded as a stranger to the cargo. In cases, however, of instant, and unforeseen and unprovided necessity, the character of agent and supercargo is forced upon him. He is also sometimes appointed supercargo, and thereby becomes the agent both of the owners of the ship and the owners of the cargo. *It is our purpose to state all the various rights and duties of the master in his relation to the cargo, either as master or as supercargo*

THE BILL OF LADING.—The Bill of Lading is the written acknowledgment of the master that he has received the goods from the shipper, to be conveyed on the terms therein expressed, to their destination, and there delivered to the parties therein designated. There are usually three or four copies of a bill of lading, one of which the master should always retain.

By the bill of lading the master is to deliver the goods at the port of destination, in like good order and condition as when shipped, "*the danger of the seas only excepted.*" Damages occasioned by the "danger of the seas" are such as are caused by the dangers and accidents peculiar to that element, which no human care or skill can guard against or surmount, such as accidents occasioned by the irresistible violence of the winds, and waves, and tides, and currents; by necessary jettison of the goods; by collision where no blame is imputable to either of the vessels. For all losses not occasioned by the perils of the seas the master and owners are liable; as losses by embezzlement or theft (but not for robbery committed by pirates), by fire, unless it is occasioned by lightning, &c

[The subject of the master's liability in relation to jettison, collision, and as a common carrier, has been fully considered in a valuable little work called the "*Merchant Shipper's Assistant, and Carrier's and Insurer's Guide.*" (pages 37, 52, 89, 90,) which every master should own]

It is usual for the master or mate, to sign a receipt for goods at the time of the shipment, and deliver it to the shipper. When this is done he must take care not to deliver a bill of lading until the receipt is returned to him.

When the quality, quantity, and weight of the goods shipped, are unknown to the master, he ought to insert in the bill of lading that "the contents, or weight, are unknown," or, *that the quantity and quality are stated according to the representations of the shipper.* And the master should be careful not to sign bills of lading until the goods are actually delivered to him, nor to permit the insertion of statements therein at variance with the fact. By so doing he may bind his owners, and become himself responsible to them and to other parties.* (See *Merchant Shipper's and Carrier's Assistant and Marine and Inland Insurer's Guide*, page 54.)

Of the preparation for the Voyage.—It is the first duty of the master who receives goods on board to be carried for freight, to see that the vessel is seaworthy, that is, that the vessel is tight and staunch, and furnished with all tackle and apparel necessary for the intended voyage; and that she is manned by a crew competent, both in point of number and skill, for the voyage, considering its length and the circumstances under which it is undertaken.—3 *Mass.* 455; *Abbott on Ship* 222.

Of the Reception and Stowage of the Cargo.—The manner of taking goods on board, and the commencement of the master's duty in this respect, depend on the custom of the particular place Thus, at some ports the goods are conveyed to the ship by means of lighters; now if, according to the contract, or custom, the master is to take them from the quay or beach, then his liability commences at that place; but if the owners are to deliver the goods at the ship's side, then his liability commences upon the reception of them, in the same manner as when the ship loads at the wharf—*Abbott on Ship.* 345.

The master must provide ropes and tackle, proper for the actual reception of the goods into the ship, and if the vessel is deficient in this respect, and any injury is done to the goods, the master and owner are liable therefor.—14 *Wend.* 225.

The cargo must be taken on board with care and skill, and be properly stowed and dunnaged. Care must be taken by the master so to stow and arrange the different articles of which the cargo consists, that they may not be injured by each other, or by the motion or leakage of the ship.—2 *Sumner*, 567. And more must not be taken on board, than the ship can conveniently carry, leaving room for her own furniture and the provisions of the crew, and for the proper working of the vessel. In short, the cargo must be well stowed, and if any injury results from bad stowage, the master is liable.—11 *Law Jour.* 255.

If the freighter appoint his own stower, then the master is no longer liable for the safe stowage of the cargo And if he inform the master that he is going to send some one to direct the stowage, it would seem that the master would be exonerated from liability, unless he was subsequently informed that no such person would be sent.—*Ibid.*

If the shipper of goods was warned as to the way in which the goods would be stowed, no action could be maintained for damage occasioned by such stowage, even if the stowage was bad.—7 *Car. and P.* 41.

Cargo must be stowed under Deck.—The goods taken on board are to be safely stowed *under deck*, and if they are stowed on deck without the consent of the shipper, or without the sanction of custom, they are at the risk of the shipowners and the master, who will be liable for any loss or injury that may happen to them from whatever cause.—*Ware's R.* 322.

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* In Bills of Lading, when there is the least reason to suspect the quantity is not right, or that there is any damage in the goods, always write:—

IF HEMP, FLAX, BARS OF IRON, &c.,

["Quantity and conditions unknown; and three bundles of hemp in dispute, if on board to be delivered."] Thomas Smith.

IF LINEN, YARN, BALES, HARDWARE, &c.,,

["Insides and contents unknown to"] Thomas Smith.

IF TAR, WINES, BRANDY, TURPENTINE, &c.,

["Contents and conditions unknown; not to be accountable for leakage; and it is agreed that the freight shall be paid for the quantity shipped."] Thomas Smith.

When any goods are to be carried on deck, it should be expressed in the Bill of Lading.

IF ARTICLES OF A PERISHABLE NATURE, SAY:

["Not to be accountable for loss by natural decay of the articles; and freight to be paid for the articles shipped."]

If goods carried on deck are thrown overboard in a storm or otherwise, for the safety of the ship and cargo, no claim to general average can be made for such loss, the goods being improperly there.—*Hughes on Ins.* 290.

If there is a local custom to carry goods on deck in a particular trade, the master is undoubtedly authorized to follow the custom, unless the contrary is expressly stipulated. The custom must, however, be of long standing, and so generally known and recognized that it is fair to presume the contract for the carriage of the goods was made in reference to it — *Ware's R.* 322.

If goods shipped, at an under deck freight, are safely carried *on deck* and delivered without damage, the ship-owners will not be entitled to any more than deck freight.—3 *Sumner*, 405.

Of the Carriage of the Goods: and First, of the Commencement of the Voyage.—When the voyage is ready, the master is bound to sail as soon as the wind and tide permit; but he ought not to set sail in very tempestuous weather. If, by the charter-party, the ship was to sail by a given day, the master must do it, unless prevented by necessity; and by necessity is meant, some cause beyond the master's control, such as head winds, bad weather, &c.; and not a delay occasioned by his default or negligence. And if there be an undertaking to sail with convoy, he is bound to go to the place of rendezvous, and place himself under the protection and control of the convoy, and continue as far as possible, under that protection, during its course.—*Str. R.* 1265; *Doug. R.* 72.

Of the course of the voyage, and the effect of deviation.—The master is bound to proceed to the port of delivery without delay, and without any unnecessary deviation from the direct and usual course; and if he be forced by perils out of his regular course, he must regain it with as little delay as possible. 2 *Cranch.* 257 *n.*; 10 *John.* 79.

If the master deviate unnecessarily, and the goods on board are lost or damaged, he will be responsible for the injury, although it is not proved to have been caused by the deviation.—12 *Conn.* 410.

As the effect of an unnecessary deviation from the regular course of the voyage is not only to render the owner and the master liable for any damage afterward happening to the goods, but also to discharge the insurers of the vessel and cargo from all liability, *from the time of deviation*, it becomes of great importance for the master to know under what circumstances a deviation will be deemed necessary.

What will justify a Deviation.—Nothing but some just and necessary cause, as to avoid a storm, or pirates, or enemies, or to procure requisite supplies or repairs, or to relieve a ship in distress, will justify a deviation from the regular course of the voyage.—3 *John. Cas.* 10; 10 *John. R.* 79.

The duration and extent of the deviation, also, must be warranted by the degree of the necessity; the ship must pursue the voyage of necessity, so as to get to her port of destination in the shortest and most expeditious manner; and any wilful departure from the direct course of this new voyage, or any unnecessary delay therein, will be a new deviation, and will be followed by the same consequences, as if it had been a wilful departure from the original voyage.—1 *Marsh. on Ins.* 198.

Stress of Weather.—If a ship, in a storm, is driven out of her regular course, or the master is compelled to seek refuge in a port at which under ordinary circumstances he would not be justified in touching, this is a necessary and therefore, a justifiable deviation—*Ibid.* If the ship be driven into a port out of the course of the voyage by tempest, the master must wait no longer than necessity requires, but sail again without delay.

While a vessel is detained at a port of necessity, it seems to be no deviation to take in an additional cargo, if no additional delay or risk is occasioned thereby.—*Abbott on Ship.* 394.

The want of necessary Repairs and Supplies.—The want of necessary repairs or supplies is another excuse for departing from the direct course of the voyage. If the ship from stress of weather, or any other cause, be reduced to such a state that she cannot safely proceed on her voyage without procuring certain repairs or supplies, the master will be justified in carrying her to some port, the least out of his course, where they can be had.—*Ibid.*

A deviation for this purpose, like every other voyage of necessity, must be pursued in the most expeditious manner; and if it appears to have been undertaken for any other object than to procure necessaries, the deviation will not be justifiable; or if there is any unnecessary delay in procuring them, this will be equivalent to a new deviation.—*Ibid.*

Succoring Ships in distress.—A deviation for the purpose of succoring a

ship in distress, ought not, it would seem, on grounds of policy, as well as from motives of humanity, to be deemed an *unnecessary* deviation. The master is bound by the first principles of natural law, and by the more positive and imperative commands of Christianity, to succor the distressed. It has, therefore, been decided that to stop or turn aside from the regular course of the voyage, for the purpose of rendering assistance to vessels in distress, when such assistance is necessary to preserve the lives of those on board, is a good cause for deviation.—1 *Sumner*, 328.

Deviation for the purpose of Saving Property.—A deviation for the purpose of saving property, is not, like a deviation for the purpose of saving life, deemed necessary. The master may deviate to save life, but after this object is effected, he is under no obligation to lie by in order to save property, or to delay the proper progress of the voyage by gathering up the fragments of shipwreck. Any stoppage for such purposes, or any going out of his course for such purposes, would of itself amount to a deviation.—*Ibid.*

Where, therefore, the master stops or goes out of his course, for the purpose of saving property, or where he increases the risk by putting a part of his own crew on board the distressed vessel for the purpose of saving the vessel and cargo, it is a deviation.—*Ibid.*; 2 *Pet. Adm.* 377.

The master is not, however, prohibited, under such circumstances, from deviating to save property in distress if he deems it fit in a sound exercise of his discretion. As between himself and his owners, the usage of the world has clothed him with this authority; and in return for such extraordinary hazards, it has enabled the owners and the master to partake liberally in the salvage awarded for the meritorious service, when it is successful.—*Ibid.*

What is meant by the "Course of the Voyage," in Relation to Deviation.—By the course of the voyage is not meant the shortest course the ship can take from her port of departure to her port of destination; but the usual and customary track, if such there be, which long usage has proved to be the safest and most convenient. And if it is customary for vessels in the course of the voyage to stop at certain places, though out of the direct line, it is not a deviation. It must be shown, however, that the custom for vessels to stop at such places, has been long and uniform; and evidence of a few instances is not sufficient to establish such a custom.—1 *Marsh. on Ins.* 183; 8 *Pick.* 365.

In one case it was decided not to be a deviation for a vessel to go out of her course three miles, to speak another at sea, on seeing a signal for that purpose; nor to delay three hours, to take from a foreign ship bound to a foreign port, shipwrecked mariners of the United States, for the purpose of bringing them direct to the United States. The bearing away, upon seeing the signal of another vessel, is no more than a common incident of a voyage, and is clearly not a deviation.—6 *Law Rep.* 363.

As a general rule, that is not to be deemed a deviation which is within the usage of the seas on such a voyage. But there are exceptions to this rule, as we have seen in the case of a delay to save property, which though it may well be considered a usage of the seas, is clearly a deviation. To constitute a usage of the seas, it is not sufficient to show that the same course has been occasionally adopted by other masters on the same voyage; it must appear to be a long established and uniform custom, so well known, that it warrants the presumption that the shipper or the insurers had it in view when they entered into their contract.—*Ibid.*

Care to be taken of the Cargo, and Master's duty in relation to it during the Voyage.—The master must, during the voyage, take all possible care of the cargo. If it requires to be aired or ventilated, he must take the usual and proper methods for this purpose; and although he is not responsible for injury done to it in consequence of a leak in the ship occasioned by tempest or other accident; yet if the leak is occasioned in the vessel by rats, and goods are damaged, the master will be responsible unless it appears that he has taken proper precautions against them, as by having cats on board.—*Abbott on Ship.* 371.

Master's liability for Loss occasioned by Embezzlement, or the Negligence of the Crew.—The master is liable if any of the cargo is stolen or embezzled by the crew or any other person, though no fault or negligence may be imputable to him. 6 *John.* 170. It has been seen in another part of this work, to what extent the crew are liable for embezzlements. (See page 46.)

The master is also liable for any damage occasioned by the negligence or misconduct of the crew, even though they were not shipped by him, but by the owner. 9 *Wend.* 15.

The Master's Duty to keep the Ship Seaworthy during the Voyage.—It is the duty of the master to keep the ship seaworthy during the voyage

if he can do so by the exercise of reasonable care and diligence. If the ship sustains an injury in her hull, sails or rigging, or becomes otherwise disabled, the injury must be repaired as soon as it can be conveniently done. If some of the crew are lost by death, desertion, or otherwise, their place must be supplied as soon as practicable. In short, if the ship is in want of repairs or supplies of any description, the master ought to procure them as soon as he can conveniently put himself in a situation to do so.—11 *Pick.* 227; 19 *Pick.* 198.

It will be seen with what power the master is clothed in relation to the procuring of repairs; that he may borrow money on the personal credit of the owner for the purpose of procuring necessaries; that in case he has no funds in his hands, and cannot procure any on the personal credit of the owner, he may hypothecate the ship and freight; and that when other means fail, he may hypothecate the whole of the cargo, or sell a *part* of it. (See page 88.)

The master is not bound to have the ship repaired for the purpose of completing the carriage of the cargo, even if such repairs can be made in a reasonable time, if the expense of procuring them will exceed half the value of the ship when she is repaired.* Neither is his duty to the cargo such, that he is bound to make the attempt to get her repaired, where her situation is such that he is authorized to sell her. (See page 81.) In short, if the situation of the ship is such as to authorize an abandonment of her to the underwriters, the master need not repair for the purpose of sending on the cargo.—4 *Wend.* 45.

THE MASTER'S DUTY IN RELATION TO THE CARGO, WHERE THE SHIP BECOMES DISABLED, SO THAT SHE CANNOT PROCEED.—It is the duty of the master upon the ship's becoming disabled so that she cannot be repaired, to procure another vessel, if it is in his power, to carry on the cargo to its destined port.—12 *John.* 107.

The general rule with respect to the amount of diligence the master is bound to exercise, in procuring another vessel to complete the carriage of the goods, is, that if he can procure another vessel at the port of distress, or at a port immediately contiguous thereto, he is bound to do it, but if no vessel can be procured, either at the port of distress, or at one near at hand, he is discharged from his duty to procure one.—*Ibid.*

But this rule must be taken with reasonable qualifications. The master, undoubtedly, ought to follow it, in cases of difficulty and doubt; as where he would be obliged to send the cargo, not to a contiguous port, but to a distant place for reshipment, or where the transportation would be difficult and hazardous. The object of the rule is to furnish a guide to the master, in cases where, but for some such rule, it would be difficult for him to know how to act. But where it is reasonable that the master, taking into view the nature of the voyage, and the time, expense and risk of transportation to the port of destination, should procure another vessel to send on the cargo, and a vessel can be procured at a port within a reasonable distance, though it is not geographically *contiguous* to the port of distress, he is bound to do it.—6 *Pick.* 131. And it seems he would be bound to do it, though it should be necessary to make use of land carriage in order to re-ship the goods.

But if the master can procure another vessel, only at a very high and exorbitant freight, greatly disproportionate to the value of the cargo; or if there are serious impediments to a transhipment, he ought not to procure one. The duty of the master to procure another vessel is only imperative when another vessel can be had in the same or in a contiguous port, or at one within a reasonable distance, and there be no great difficulties in the way of a safe re-shipment of the cargo.—12 *John.* 107; 6 *Cowen*, 270.

If the master does employ another vessel to complete the carriage of the cargo in a case of necessity, the owner of the cargo is bound to pay the *extra* freight, if any, for the renewed voyage in the vessel procured by the master. Extra freight here means, the increase of freight beyond what the freight would have been under the original charter-party, if the necessity of hiring another vessel had not intervened.—4 *John. Ch. C.* 218.

If the damaged ship can be repaired within a reasonable time, so as to be able to proceed on her voyage, the master is not bound to procure another vessel, but

* The insurers are never liable for more than two-thirds of the cost of repairs, for the owner is supposed to be benefited to the amount of one third of the expense in having new materials instead of old. The ship, therefore, is not damaged to half her value, so as to entitle the master to sell and abandon, unless two thirds of the expense of repairs amount to half of her value; or, in other words, unless the whole cost of repairs will exceed three-fourths of her value

may retain the cargo until his ship is repaired, and then proceed to complete the carriage of the goods—1 *Story*, 342.

If a ship, being damaged so as to be obliged to put into an intermediate port for repairs, can be repaired within a reasonable time, the owner of the goods cannot claim them at such intermediate port, without paying *full freight* for the whole voyage. Neither can he claim the goods at such intermediate port without paying full freight, even where the ship cannot be repaired, if the master offers to procure another vessel to carry on the cargo.—*Ibid.* ; 3 *John.* 9 *ibid.* 17.

In those cases where the ship can be repaired within a reasonable time, or another vessel can be procured, the owner has no right to claim the goods without paying full freight, although the cargo is in such a damaged state, that if carried to the port of destination, it will be utterly ruined; or, although by reason of the delay necessary to complete the repairs, the cargo being of a perishable nature, would be utterly spoilt and worthless by the time it reached the destined port. Nor will it make any difference in this respect, that by such detention and retardation of the voyage, the arrival of the cargo at the place of destination will be so late as to disappoint the purposes of the shippers, by the change of the season, loss of market or otherwise. The reason of this is obvious. The contract of the ship-owner is to carry the cargo to the port of destination; but he by no means warrants the state, in which it shall arrive, as it may be affected by the perils of the seas, or other perils, against which his contract does not bind him; and the shippers have no right to throw the loss of freight upon him, because the cargo is in danger of ruin by a calamity against which he did not warrant them.—1 *Story*, 342; 23 *Pick.* 412.

Whether the vessel can be repaired and made ready to take the cargo, *within a reasonable time*, is a question which must depend much upon the circumstances of the case, such as the place where the vessel is, or can be readily brought to, whether labor and materials can be readily had or promptly obtained; and this must be determined by considerations applicable to the vessel alone, and will not be influenced by the consideration, that the cargo will be deteriorated by the delay, or lose the proper season for a favorable market, or for a particular sale which the shippers had in contemplation. In some of the cases that have been tried, two, three, and four months have not been considered an unreasonable time.—23 *Pick.* 413; 2 *ibid.*, 104.

But where the owner of the cargo is not present, the master ought not in such cases to carry on the cargo after the ship is repaired, or by means of another ship, if from its perishable nature, or damaged state, it will become utterly worthless on its arrival at the port of destination. The master, in a case of necessity, or of unexpected and pressing calamity, occurring in the course of the voyage, is by law, created an agent from necessity for the benefit of all concerned; and what he fairly and reasonably does, under such circumstances, in the exercise of a sound discretion, binds all the parties in interest in the voyage, whether owners, or shippers, or underwriters.—1 *Story*, 342. What then is the master to do in those cases of necessity, where it will be highly prejudicial to the interests of the shippers to attempt to complete the carriage of the goods? This leads us to consider

THE MASTER'S AUTHORITY TO SELL THE CARGO, OR ANY PART OF IT.—When a cargo is so much injured, that, though capable of being carried to the port of destination and there landed, yet, from its present state, it will endanger the safety, as well of the ship, as of the cargo, or it will become utterly worthless on arrival at the port of destination, it is the duty of the master, exercising a sound discretion for the benefit of all concerned, and especially of the shippers of the cargo, to land and sell the same at the place, where the necessity arises, whether it be at the original port of the shipment to which the ship returns, or any intermediate port, at which the ship arrives in the course of the voyage.—*Ibid.*

So, if by reason of the delay necessary to complete the repairs, or to procure another vessel, the cargo being of a perishable nature, will be utterly spoilt and worthless by the time it reaches the port of destination, the master ought to sell it.—*Ibid.*

The master has great discretionary power over the cargo, when driven into a port in distress, where there is no owner or consignee present. It is impossible to lay down any general rules which will be applicable to every case. Much must depend upon the nature and condition of the goods; the length of time required to repair the vessel; the difficulty of procuring another vessel, or of reshipping the goods, or the rate of freight at which the vessel can be hired; the state of the market at the port of distress, &c.; all of which will be taken into consideration by a prudent master in determining what course it is most advisable to pursue for the benefit of all concerned. The master, in short, in cases of necessity, is to do with the cargo what a prudent owner who was uninsured might be expected to do under like circumstances.

Unless, however, there was a legal necessity for the sale, the master would not be justified in selling the cargo, merely on the ground that a sale would be the best thing for the owners, and that a prudent owner, if present, would sell under the same circumstances. Thus, the market price of the goods at the port of distress might be such, that the owners of the cargo, if present, would be willing to terminate the voyage there rather than prosecute it to the port of destination, although the cargo was in a condition to be safely re-shipped, and to perform the remainder of the voyage without serious injury. But this would furnish no ease for the exercise of the master's power. To justify a sale made by him, where the vessel could have been repaired, or another one procured, it must appear that there was good intention and sound discretion on his part, and that he was compelled by the necessity of the case to act; that the cargo could not have been sent on to the port of destination without a loss exceeding fifty per cent. For if that could have been done, the law is clear, that the master had no lawful authority to break up the voyage and sell the cargo, notwithstanding he acted with good faith.—13 *Pick* 551.

Where no repairs can be had, or the vessel is not worth repairing, and no other vessel can be procured, so that it is impossible to convey the cargo to the port of destination, the master must, of course, dispose of it in the best manner possible.

The master's right to sell the cargo, however, like his right to sell the ship, will, in all cases, be justified only by a legal necessity. Where he is in a situation, therefore, to communicate readily with the owners or insurers, he has no right to sell, unless the necessity is so urgent as to require immediate action; as if the goods will probably perish or be destroyed before the directions of the owners could be obtained.—*Ibid.*

When the Master may make a Jettison of a part or the whole of the Cargo.—The master has authority to throw overboard a part of the cargo for the purpose of saving the ship and the residue of the cargo, in a case of extreme peril. He can make a jettison, however, only in a case of extremity, as where the ship is in danger of perishing by the fury of a storm, or is laboring upon rocks or shallows, or is closely pursued by pirates or enemies. The mere convenience of better sailing, or more commodious stowage, will not justify him to throw overboard the smallest part.—3 *Rob. Adm.* 240.

In cases of extreme danger, when the lives of the crew cannot otherwise be saved, the master may even throw the whole cargo overboard.—*Ibid.*

It is advisable for the master, before proceeding to throw overboard any part of his cargo, if the case is such as will admit of deliberation, to consult with the most skilful and experienced men of the ship's company, whether a jettison ought to be made, and if so, in what manner, and of what things. But the master is responsible for the due exercise of his own judgment in the case of a jettison; he is not to be governed by the opinions of the rest of the ship's company, but merely to give to it such weight as he thinks it merits. He has the authority, and if he shows a necessity of the sacrifice, he will be excused, whether he follows the advice of the crew or not; on the other hand, if the sacrifice was clearly unnecessary, he would not be excused because he had followed their advice.—*Ware's R.* 9. Of course, where the danger is imminent, and requiring immediate action, the master must act without any such consultation.

If the owner of the goods be present and refuse his assent, the master may proceed, in an extreme case, without his permission. In selecting the articles to be thrown overboard, those which are the least necessary, the heaviest and the least valuable, ought to be taken first; and nothing but the greatest extremity would excuse the master who should commence the jettison with money, and other precious parts of the cargo. But this must be regulated by the prudent choice of the captain, according to the necessity of the case.—3 *Rob. Adm.* 240.

As a general rule, the crew of a vessel are not authorized to make a jettison of any part of the cargo, even in a case of distress, without the order of the master.—*Ware's R.* 9.

General Average.—In cases of general average, the master has a right to detain the goods of the shippers until their proper share of contribution towards the general average is paid or secured.

The whole subject of general average has been fully treated in a valuable little work called "*Merchant Shipper's Assistant, and Carrier's and Insurer's Guide*," (page 74 to 88); a work which every master ought to have, and which will be invaluable to him, as containing, among other matters, a very full statement of the principles of Marine Insurance, and the relation in which he stands both to the owners and insurers.

Of the delivery of the Goods at the port of Destination.—On the arrival of the ship at the place of destination, the cargo is to be delivered to the

consignee, or to the order of the shipper, on the production of the bill of lading and payment of the freight. The master is not bound to deliver the goods until the freight is paid, as he has a lien upon them for his freight; but he cannot detain the goods on board the ship until the freight is paid, for the merchant ought to have an opportunity to examine the condition of them previous to payment. In such case they should not go out of the possession of the master or his agent.—*Abbott on Ship.* 461.

In general, there is a lien on the goods shipped for the freight due thereon, whether it arise under a common bill of lading or under a charter party. But, then, this lien may be waived by consent; thus, if by the terms of the charter-party, the goods are to be delivered before the payment of the freight, the lien for the freight is clearly waived, and cannot be enforced But where the payment or security of payment of freight, is to be concurrent with the delivery, there the lien exists in its full force, and may be insisted on. A stipulation for the payment of the freight *ten* days after the *return of the vessel*, was held not to amount to a waiver of the lien, because, as ten days was less than the usual time allowed to deliver the cargo, it afforded no presumption that the cargo was to be delivered before the freight was either paid or secured.—1 *Sumner*, 551.

It is sufficient for the master, when there are no special directions to the contrary, to deliver the goods at the usual landing place, provided he gives due notice to the parties who are to receive them —15 *John.* 39.

It is often difficult for the master of a vessel to know to whom he can safely deliver the goods, in case of conflicting claims between consignor and consignee, or consignor and the assignee of the consignee. In general, where two opposite parties claim a right to receive the goods, both or either of them will be willing to give an indemnity to the master; and the master should, in prudence, deliver the goods to the party upon whose indemnity he can most safely rely. But if a satisfactory indemnity is not offered, and the master must exercise a discretion; then if the bill of lading has not been assigned over by the consignee, and he has failed, without doubt the master should deliver to the person who claims on behalf of the consignor. If the consignor has indorsed bills of lading to different persons, the master should deliver to the person to whom the consignor first made the indorsement. The better course for the master to pursue in all cases where there are two or more claimants to the cargo, and neither of them can give him a satisfactory indemnity, and he is in doubt as to which claim is best, is to deposit the goods in a place of safety, and apply to the Court of Chancery by way of interpleader, to compel the claimants to litigate their rights by an action between themselves.—*Abbott on Ship.* 395.

If the consignee refuses, or is unable to receive the goods, the master cannot discharge himself from responsibility by leaving the goods on the wharf, but it is his duty to take care of them for the owner; unless the consignee is under an obligation to receive them, in which case they will be at his risk.—4 *Pick.* 371.

In one case, where the master was, by his agreement with the shippers, to deliver the cargo at a place designated, but upon his arriving there, the consignee refused to receive it, it was held, that, as the cargo was not of a perishable nature, the master was bound to land it at the place designated, and store it for the benefit of the shippers, and could not carry it to another port, nor sell it, although it could not be sold at the port designated —2 *Story*, 81.

Where the goods are not landed from the ship's side, but are taken ashore in lighters, the master is responsible for their safe carriage to the shore, unless there is an express agreement to the contrary, or unless the owner or consignee takes them from the ship in lighters hired by himself.—4 *Boz. and Pul.* 16.

THE MASTER'S DUTY AS CONSIGNEE OR SUPERCARGO.—The master is sometimes appointed supercargo or consignee, in which case he is the agent both of the ship-owner and the shipper. It becomes necessary, therefore, to consider what acts of the master are to be deemed his acts as agent of the ship-owner, and what as agent of the shippers. The general rule is, where the master is also consignee, that, during the voyage, he acts as agent of the ship-owners, but after the arrival of the cargo, he is to be considered as acting in his capacity as consignee. Thus, in the stowage of the cargo, its safe custody and delivery, he is the agent of the ship-owner, but in its sale, and in accounting for its proceeds he is the agent of the consignee or shipper—and in such case, where the owner receives only the *freight*, and the master *commissions* on the sales, and the master neglects to account for the proceeds, an action will not lie against the ship-owner for such neglect.—13 *Wend.* 58.

The master as supercargo must obey the instructions of the shippers as to the disposal of the cargo. But if, by some sudden emergency or unexpected event, it

becomes impossible for the supercargo to comply with the exact terms of his instructions, or a literal compliance therewith would frustrate the objects of the owner, and amount to a total sacrifice of his interests, it becomes his duty, under such circumstances, to do the best he can in the exercise of a sound discretion to prevent a total loss to his owner, and if he acts in good faith, and exercises a reasonable discretion, his acts will bind the owner.*

CHAPTER II.

RIGHTS AND DUTIES OF MASTER.

Duties imposed upon the Master by the Revenue and other Laws — Master's Authority as to the Employment of the Ship.—Master's Authority to procure Repairs and other Necessaries during the Voyage: When he may Borrow Money for that purpose: When he may make a Bottomry Bond: When he may Hypothecate the Freight and Cargo, and Sell a Part of the Cargo.—Master's Power to Sell the Ship.—Duty of the Master to Protest in case of Accident.—Duty of the Master to procure a Pilot.—Master's Relation to the Crew.—Master's Relation to the Passengers.

DUTIES IMPOSED UPON THE MASTER BY THE REVENUE AND OTHER LAWS OF THE UNITED STATES.—The duty of the master to take to sea with him a certified copy of the list of his crew and of the shipping articles, has already been stated.—(See pages 9, 10.)

Besides the shipping articles and a list of the crew, the documents necessary for American vessels going on foreign voyages, are a CERTIFICATE OF REGISTRY —a PASSPORT, necessary only for vessels bound to Europe; it is a permission from government for the vessel to go upon her voyage, and contains a description of the vessel, crew, &c., and the name of the master; penalty for not taking one, $200:—the SEA LETTER, which specifies the nature and quantity of the cargo, and place of destination, is written in four languages, the French, Spanish, English and Dutch, and is only necessary for vessels bound round Cape Horn and the Cape of Good Hope:—the BILL OF HEALTH; the GENERAL CLEARANCE; the CLEARING MANIFEST, and if bound to France, Sweden, Brazil and Portugal, there must be a Duplicate Manifest, certified by the foreign consul, to be kept on board; penalty for not delivering a manifest of the cargo and obtaining clearance, $500:—the BILL OF LADING; the CHARTER PARTY, if one is given; the INVOICES; and the LOG BOOK. On entering at the Custom House, the master is required to have a MANIFEST; LIST OF PASSENGERS AND CREW; and of the remaining SEA STORES.

The master, on arriving at a foreign port, must deposit with the consul, or other commercial agent, (if any there be at such port) his register, sea-letter, and passport (if he have any) under a penalty of $500. These are to be returned by the consul to the master upon his obtaining a clearance.—*Act* 1803, *ch.* 62, *Sec.* 2.

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* In this case, flour was shipped to be sold, at some one or more of the South American ports. It turned out, however, that the flour could not all be sold at the South American ports, or at least, not sold unless at an enormous sacrifice; the supercargo, therefore, concluded to carry the balance to Batavia, which he did, and sold it there. Judge Story in charging the jury, told them that he should put it to them to say, whether the carrying the flour to Batavia, and selling it there, was not an act of necessity, to prevent a total loss to the owner. If it was, then the supercargo was justified in directing the sale.—2 *Law Rep.* 325.

In one case it was held, that were a master of a vessel carries goods to a distant port, with orders to dispose of them for the most he can obtain, but is unable to find a purchaser, he is justified in leaving them in the hands of a merchant in good credit to be sold for the owner.—2 *Pick.* 615.

The master, upon arriving in the United States, must deliver to the collector a list of the passengers, specifying their names, age, sex, occupation, the country to which they belong, and that in which they intend to reside.—*Act* 1819, *ch.* 170, *sec.* 4. (See page 98.)

The master, returning from a foreign voyage, must have a *manifest* of the cargo, and a copy of the same, made out and ready to deliver to any officer of the customs who may come on board upon his arrival within four leagues of the coast. No goods can be imported in an American vessel without this manifest; and it must contain the names of the ports where the goods were received, and to which they are consigned, the name, description, and build of the vessel, with the names of the master and owner, the marks and numbers of each package of goods, with the name of the consignee; and also the names of all passengers, (distinguishing between cabin or steerage passengers,) with their baggage, and an account of all remaining sea stores.—*Act* 1799, *ch.* 128, *sec.* 23.

Any vessel laden as above, unloading goods within the limits of any district or within four leagues of the coast, without authority from proper officers, subjects the master and mate to a penalty of $1000 for each offence, and the goods to forfeiture, except in case of accident or necessity, which must be strictly proved. —*Ibid. sec.* 27.

A master refusing to exhibit his manifest, and deliver a copy of the same to the boarding officer, or to inform him of the true destination of the vessel, forfeits $500.—*Ibid. sec.* 26.

In making out manifests of cargoes, masters must specify what articles are to be deemed *sea stores*, and swear to the same. If the amount is deemed excessive by the collector, he may charge them with duty. If any sea stores are landed by the master without first obtaining a permit, they are forfeited, and the master is liable to pay treble the value of them.—*Ibid. sec.* 45.

If any goods are imported into the United States, without a manifest, or not contained in the manifest, the master of the vessel forfeits a sum equal to the value of such goods; and if any part of it belongs or is consigned to the master or any officer or seaman on board, it is forfeited; unless it can be proved that the manifest was lost or mislaid, or that the omission occurred by accident or mistake. The master forfeits $500 in case any articles reported in the manifest are not found on board, unless it appears that the same was caused by accident or mistake —*Ibid. sec.* 23, 24.

The cargoes of vessels arriving from foreign ports must be unladen and delivered between sunrise and sunset, unless special permission is obtained from the collector of the port.

Goods remaining on board after the expiration of fifteen working days from the day of arrival, (other than goods reported for some other district, or foreign port,) must be taken possession of by the collector.

The master must deposit all his letters at the Post Office, except such as are directed to the owner or consignee of the vessel, before entering his cargo; and if he breaks bulk before depositing his letters, he forfeits $100 for each offence — *Act* 1825, *ch.* 275, *sec.* 17.

The master, arriving from a foreign port, must report himself to the collector within 24 hours, and within 48 hours he must make a further and more particular report, in writing, under a penalty of $100; and if he attempts to leave the port without entry, he forfeits $400.—*Act* 1799, *ch.* 128, *sec.* 30.

If the master take on board any contraband or unlawful goods, whereby other parts of the cargo, or the ship may be liable to forfeiture or detention, he is responsible; or if he takes on board any false or suspicious papers, which may subject the ship to capture or detention, he is liable for damages.—*Abbott*, 211.

The master is bound to observe the revenue laws of whatever country he may be in, and if he violate them, he is answerable to the owner for the loss.

MASTER'S AUTHORITY AS TO THE EMPLOYMENT OF THE SHIP.—The master is bound to obey the instructions of the owners respecting the employment of the vessel; and when they make a contract respecting the employment of her, he cannot make another to annul or supersede it. He has, however, by virtue of his office, general authority to make all contracts belonging to the ordinary employment of the ship; as, for example, to let the ship on a charter party, and to take shipments on freight, if such is the usual employment of the ship, but not otherwise.—*Abbott on Ship.* 90.

Unless this general authority of the master is limited by instructions from the owners, all contracts made by virtue of it will be binding upon them and the vessel, as well as upon the master; and where the master has exercised this authority in good faith, he will not be liable to the owners for any damage which they may be occasioned thereby.—*Ware's R.* 263.

And even if the master violates his private instructions, the owners will nevertheless be bound by his contracts, where they are made in accordance with the usual employment of the ship, and the persons with whom he contracts are ignorant of such instructions. But, in such case, the master would be liable to the owners for the damages occasioned them by this breach of his authority.—*Story on Agency, sec.* 443.

It becomes necessary, therefore, to examine both the nature and extent of this authority, vested in the master.

The master of a general ship may receive goods on board to be carried for freight, and sign bills of lading for the same, which will bind the owners. This right may be exercised by him at any other than the home port; and even at the home port, it rarely happens in practice that the owners interfere with the receipt of the cargo, and without doubt they are bound by every contract made by the master relative to the usual employment of such a ship.—*Abbott on Ship.* 93.

Where the ship is not put up to freight, or, in other words, is not a general ship, but is wholly freighted by the owners, they will not be bound by any contracts of the master for carrying any freight.—6 *Cowen*, 173.

And even in the case of a general ship, where an owner is on board and exclusively attending to the shipment of the cargo, the master has no right to contract for freight, and any contracts made by him will not be binding on the owners.—*Ibid.*

But in order to free the owners from liability on the contracts of the master, they must prove that the owner on board was exclusively attending to the shipment of the cargo; it is not enough for them to show that he was on board as supercargo. —*Ibid.*

The master may let the ship by charter-party, when such is the usual mode of letting her. He has not ordinarily the right however to make such a contract in the home port or when the owners are present. But there are cases where a charter-party made by the master in a home port would be binding on the owners: as where the master has exercised the same authority in the former voyages of the vessel; and especially would it be binding on the owners, if they saw or knew that the goods were going on board under the charter-party without objection.—3 *Sumner*, 149.

The master has no right to divert the ship from her ordinary employment. Thus, if the ordinary employment of the ship has been the carrying of cargoes on the sole account of the owner, the master has no implied authority to let the ship to freight, even in a foreign port. So, if the ordinary employment has been to take goods on board on freight, as a general ship, the master will not be presumed to possess authority to let the ship on a charty-party for a special and different business. So, if the ship has been accustomed to the coasting trade, or the fisheries, or to the river navigation only, the master will not be presumed to possess authority to divert the ship into another trade, or business, or voyage, on the high seas —*Story on Agency, sec.* 121.

The master has no authority, by virtue of his office, to purchase a cargo on account of the owners; and the usage of a particular port that the master of a vessel as such has power to purchase a cargo on account of the owners is void, and cannot bind the owners.—17 *Maine*, 147.

Every contract of the master, within the scope of his authority as master, is binding on the owners; and whoever deals with the master in all cases where he is acting within his authority, is entitled to look to the ship as his security.—*Ware's R.* 322. When a vessel is let by a charty-party and the charterer victuals and mans her, and has the entire control of the vessel, the general owner is not responsible for the acts of the master. But, in such cases, persons dealing with the master have a lien upon the ship as security.—*Ware's R.* 263.

MASTER'S AUTHORITY TO PROCURE REPAIRS AND OTHER NECESSARIES DURING THE VOYAGE.—The master of a ship has authority, in a foreign port, in the absence of the owner or employer, to procure all supplies and repairs necessary for the safety of the ship, and the due performance of the voyage.—3 *Sumner*, 233.

This authority is not limited to cases of absolute necessity; but the master may procure such supplies and repairs as are *reasonably* fit and proper for the ship under the circumstances, and not merely such as are absolutely indispensable for the safety of the ship or the accomplishment of the voyage.—*Ibid.* 237. The proper mode of ascertaining what is necessary, is to ask what a prudent owner would himself have done had he been present.

It has been seen in another part of this work what amount and kinds of provisions vessels are required by law to have on board at the time of leaving the

last port from which they sail. The master must see that his vessel is thus provided. (See pages 13 & 98.)

All that is required of the master in the exercise of his authority is, that he shall act in good faith, with reasonable diligence, discretion, and skill; and if it appears, as it sometimes does in the case of repairs, that a more judicious course might have been adopted, yet if, upon the advice of competent persons, he did what he at the time thought best, he will be protected, and the owners, if any, must suffer.—*Sumner*, 253.

MASTER'S AUTHORITY TO BORROW MONEY FOR THE PURPOSE OF PROCURING REPAIRS AND SUPPLIES.—The master has power to borrow money for the purpose of procuring necessaries; and for money thus advanced the owners are liable.

Where money is advanced to the master while abroad, the lender, if he means to charge the owner, must show that he exercised reasonable diligence in order to ascertain whether such supplies and repairs were necessary and proper; and this strictness is necessary to prevent an abuse of authority, to which the master might otherwise be tempted.—3 *Kent's Com.* 163.

The lender is not obliged, however, to show that there was a positive necessity. It is sufficient if there is an apparent necessity, so far as the lender is able upon due inquiry and diligence to ascertain the facts. And in a case where no inquiries whatsoever could have put the lender in possession of the real facts, and he has acted upon the representations of the master, with good faith and under circumstances affording no ground of suspicion of ill faith in the master, he is released from all responsibility in regard to such inquiries. Thus, if he should be deceived in making advances for repairs or supplies for imaginary injuries or losses at sea, which he could have no means of knowing or tracing, but which the master and crew fraudulently pretended to exist, he would undoubtedly be enabled to recover of the owner the amount of advances.—3 *Sumner*, 223.

If the money was fairly and regularly lent, the misapplication of it by the master will not affect the lender's claim upon the owner. It cannot be expected that the lender can see to the actual application of the money advanced, or minutely ascertain the exact amount required for the purpose. He is to see that an apparent case of necessity for repairs (that is, a case authorizing the master to procure supplies or repairs) is made out; and he is to take care that he does not knowingly advance more money than what may be fairly deemed fit for the occasion. But having done this, and acted with good faith, he is entitled to recover the amount advanced from the owners.—*Ibid:* 3 *Kent's Com.* 163.

The master himself is liable to the lender for the money borrowed, unless it was stipulated that the money should be advanced on the credit of the owner solely.

The master has not, like the seaman, a lien on the ship for his wages; and in England it is well settled, that the master has no lien on the ship, freight or cargo, for any debt of his own, as for stores furnished, or repairs done at his expense, either at home or on the voyage, but must proceed against the owner personally for any such debt. In this country, however, the master has a lien upon the freight for his necessary advances made, and responsibilities incurred, for the use of a ship in a foreign port, and some of the courts have seemed inclined to acknowledge the master's lien on the ship for the same object.—3 *Mason*, 255.

WHEN THE MASTER CAN MAKE A BOTTOMRY BOND.—A Bottomry Bond is a contract in the nature of a mortgage, by which the ship is pledged as security for money loaned. The condition of the bond is, that if the ship shall be lost in the course of the voyage, by any of the perils enumerated in the contract, the lender also shall lose his money; but if the ship shall arrive in safety, then he shall receive back the amount loaned, with the interest agreed upon. A bottomry bond may be upon time, as well as upon a specific voyage. The payment of the loan depends upon whether or not the vessel is lost before the termination of the voyage or term of time named in the bond.—2 *Sumner*, 186.

If the vessel is not lost, the creditor has a lien upon her for the payment of his debt. He may, however, lose this hold upon the vessel by his *laches* (that is, by his neglecting to enforce his claim within a reasonable time,) as where he suffers the vessel to make several voyages without endeavoring to enforce his claim, though he was in a situation to do it, and she is afterwards sold to a person ignorant of such claim. But if he is guilty of no *laches*, the vessel is bound for the payment of the debt, and may be sold for that purpose, even though she has passed into the hands of a *bona fide* purchaser, ignorant of any claim existing against her.—*Ibid.*

If after the risk on a bottomry bond has commenced, a sale or transfer of the vessel takes place, or the voyage is in any manner broken up by the borrower, the maritime risk terminates, as in the case of a policy of insurance, and the bond becomes immediately payable.—*Ibid.*

As a compensation for the risk run, an extraordinary premium, beyond the legal rate of interest, is paid for the money advanced. This is the peculiar feature of loans upon bottomry. In the case of an ordinary loan of money upon the credit of the owner or otherwise, the lender can claim only a legal rate of interest, and a contract for a higher rate than that allowed by law for the loaning of money, would be usurious and subject the lender to certain penalties or forfeitures, differing in different countries. But in consideration that the lender advances the money on the faith of the ship and at the sole risk of her loss or safety, he may contract for any amount of premium for the money advanced, though it greatly exceeds, as it usually does, the legal rate of interest. The loan, however, must be at risk, and if it is stipulated that it shall be paid by the owner at all events, whether the vessel be lost or not, the bottomry bond will be void.—4 *Binn.* 244.

As this mode of raising money is an expensive one, it is obvious that it would not be for the interest of the owners to employ it, when any other means for raising money are at hand. The power of procuring loans or advances upon bottomry is, therefore, one of the most delicate powers entrusted to the master, and one which he cannot exercise except under peculiar circumstances. It is now our purpose to state what combination of circumstances will authorize and render it the duty of the master to resort to a direct *hypothecation* of the ship, by giving a bottomry bond.

1. *The master can hypothecate the ship* (that is, give a bottomry bond,) *only in a foreign port, in the absence of the owners.*—1 *Wash. C. C.* 49; *Gilpin*, 457.

The vessel must be in a foreign port. It is not necessary, however, that she should be at a port out of the United States; for a port in any other than the State to which the vessel belongs would, it seems, be deemed a foreign port. But it is extremely doubtful whether a master has the right to hypothecate his vessel in a port in close proximity with the home port, and between which ports the communication is direct and easy, simply because they are in different states; and it is highly probable that a bottomry bond thus given would be void.—4 *Wheat.* 438; 9 *Wheat.* 409.

In one case it was held, that a vessel belonging to the port of Richmond, in Virginia, may be hypothecated in the port of New York, by the master, for necessary repairs, if the owner has no agent in New York.—1 *Brock.* 396.

The true rule would seem to be, that where the necessity is not immediate, and the communication between the place where the master is and the residence of the owners, is not difficult, so that the master may consult the owners without any great loss being occasioned by the delay, it is his duty to communicate with them before attempting to raise money upon bottomry.—*Com. Ct. of N. Orleans*, 1839.

The master cannot hypothecate the ship when the owners are present.—(1 *Wash. C. C.* 49.) It has been thought, however, that if only a minority of the owners are present or reside at the place, then the master's power remains good. —3 *Kent's Com.* 172. Perhaps it might be safely laid down, that the presence of one of the owners, who had but a small interest in the ship, and who did not take any part in the management of her, would not deprive the master of this power. But the general rule is, that if a part-owner only be present the power of the master to hypothecate ceases, and few cases will probably ever occur where the master, acting with a view to the best interest of all concerned, will feel obliged to disregard it.—1 *Brock.* 396; 1 *Hagg.* 3.

If an agent of the owner be present, the power of the master to hypothecate is said to cease; but this is not true in all cases. To deprive the master of this power, the agent must not only be duly authorized to act in supplying the ship's necessities, but must also be willing to act; and if he is not, the authority of the master is the same, as if no agent were present.—1 *Hagg.*

2. *The master cannot borrow upon bottomry except for the purpose of procuring supplies or repairs necessary for effectuating the objects of the voyage, or the safety and security of the ship* —1 *Wheat.* 103. *And he cannot give a bottomry bond to secure an existing debt, or as security for advances made or supplies already furnished on the personal credit of the owners.*—1 *Pet. Adm.* 300.

The advances must be for necessaries reasonably fit and proper for effectuating the objects of the voyage, or the safety of the ship; such as has been seen the master is authorized to procure. And as this is a very expensive mode of rais-

ing money, the master should be careful not to resort to it except in a case which clearly requires it. In ascertaining what is necessary the proper mode would be to ask what a prudent owner would do under like circumstances.—3 *Sumner*, 237.

When the master is authorized to employ a vessel in a particular way or in any particular enterprise, and he is obliged to raise money to comply with his orders, he may take it on bottomry, if he cannot obtain it on any other terms.—*Ware's R.* 253.

The lender on bottomry is bound to exercise reasonable diligence, in order to ascertain, whether such supplies and repairs are necessary and proper. He is not bound, however, to show, that there was a positive necessity. It is sufficient, if there is an apparent necessity, so far as the lender is able, upon due inquiry, to ascertain the facts.—3 *Sumner*, 252. This duty of the lender has, however, just been considered in examining the master's authority to borrow money, to which the reader is referred.

Where there is an apparent necessity for repairs, the lender on bottomry is under no obligation to inquire, as to the best mode of making the repairs, or whether they are made in the most judicious manner, or to ascertain the cause of the injury. It is sufficient, if he acts with good faith, and does not co-operate wilfully in any unnecessary expenditure.—*Ibid.*

The master cannot hypothecate the vessel for an existing debt, but only for advances for a purpose necessary to enable him to complete the voyage, and furnished at the time the necessity existed. 1 *Wash. C. C.* 293.

The fact that a creditor threatens to arrest the ship unless his debt is paid, is not a sufficient necessity to justify the master in giving a bottomry bond, since it may be an idle threat, which the creditor may not enforce; and until enforced, the peril would not act upon the ship itself.—1 *Wheat.* 96.

Where, however, a ship is arrested in a foreign port at the instance of a creditor, and a person advances money to relieve the ship from such arrest, such person may stipulate for a bottomry interest, and the necessity of the occasion will justify the master in giving it, if he has no other sufficient funds, or credit to redeem the ship from such arrest.—*Ibid.*

If a merchant advances money on the personal credit of the owners, he is not at liberty after it is expended to turn round and demand bottomry security, with maritime interest. If he had intended to have insisted on this, he should have required it in the first instance. Thus, where the advances were made before any thing was said of a bottomry bond, and after the ship was cleared out and ready to sail, the creditor interposed and refused to let her depart unless the master would secure the advances by a bottomry bond, which he did, the bond was held to be void.—*Ware's R.* 249.

But the fact that the master ordered the supplies and repairs before the bottomry bond was given, will not defeat the security, if they were ordered by the master upon the faith, and with the intention that a bottomry bond should be ultimately given to secure the payment of them. In cases of this sort, the bottomry is in practice ordinarily given after the whole supplies and repairs have been furnished; for the plain reason, that the advances required can rarely be ascertained with exactness until that period.—8 *Pet. S. C. R.* 538.

3. *The master cannot hypothecate the ship when he can procure the necessary advances either upon the owner's or his personal credit.*

The master is bound to raise the money by means the least injurious to those he represents. If, therefore, the necessary advances can be procured upon the personal credit of the owner, the master is not at liberty to take up the money on bottomry.—3 *Sumner*, 228. We have just seen that, where the creditor in the first instance advanced the necessary supplies or repairs upon the personal credit of the owner, he cannot, after the advances are made, claim to be secured by a bottomry bond.

So, if the master has funds of the owner in his hands or under his control, he cannot hypothecate the ship.—*Ibid.* So, if there are funds of the owner in the hands of his agent or consignee at that place, or if such agent or consignee is bound to afford means on the personal credit of the owner, the master cannot give a bottomry bond. But this last proposition must be taken with some qualification. Thus, the agent or consignee, though having funds of the owner in his hands, may, by possibility, refuse to advance what is necessary, in which case if the necessaries could not be procured upon the personal credit of the owner, the master would be obliged to resort to hypothecation.—8 *Pet. S. C. R.* 538: 2 *Pet. Adm.* 307.

It has been thought by writers upon this subject, that a master cannot resort to

hypothecation, whenever he can procure the necessary advances upon his own personal credit. This question has never been, to my knowledge, the subject of direct adjudication, probably because it very seldom happens that the master of a vessel will have a personal credit, where his owner has not. Where the master has sufficient money of his own on board, he cannot, as a general rule, resort to bottomry.—3 *Mason*, 255.

If the master has any other funds, which may be properly applied for the purpose, or if he can procure the advances upon the personal credit of the owner, and therefore ought not to take up money on bottomry; yet, if the lender upon bottomry has acted in good faith, and without any knowledge or suspicion of the existence of such funds, or personal credit, or could not, upon reasonable inquiry, acquire knowledge thereof, the owner will be bound by such hypothecation.—3 *Sumner*, 228.

4. The master has no right to hypothecate the ship for the benefit of the cargo. —9 *John.* 29. Nor to raise money for his private purposes.—2 *Wash. C. C.* 297.

MASTER'S AUTHORITY TO HYPOTHECATE THE FREIGHT AND CARGO, AND TO SELL A PART OF THE CARGO FOR THE PURPOSE OF SUPPLYING NECESSARIES.—The master may pledge the freight under the same circumstances of necessity, in which he is allowed to pledge the ship.—3 *Mason*, 255.

If the master cannot supply the wants of the vessel either upon the credit of the owners, or by hypothecating the ship and freight, he may then sell a part of the cargo, or hypothecate the whole.—2 *Wash. C. C.* 237.

But the master can sell only *part* of the cargo, because the express purpose of the sale is to enable the remainder to go forward. But he may HYPOTHECATE THE WHOLE.—3 *Rob. Adm.* 240, 274. It must be a case of extreme necessity to warrant the exercise of this power

Where the cargo belongs to the owners of the ship, the master may, in his discretion, sell a part of the cargo, in preference to borrowing upon bottomry, if such sale would be attended with less loss to the owner, than would be occasioned by the payment of a high rate of interest.—2 *Wash. C. C.* 237.

MASTER'S POWER TO SELL THE SHIP.—Notwithstanding the great power which we have seen has been confided to the master to enable him to procure such supplies and repairs as are necessary to enable the ship to complete her voyage, the vessel may be in a situation where it is impossible for her to proceed. She may become disabled at a place where no repairs can be had; or where the master may be unable, by any means in his power, to obtain credit sufficient to procure such repairs as are absolutely necessary to enable her to proceed; or where he cannot procure such repairs unless at a ruinous expense; or she may be in so dangerous a situation that little or no hope can be entertained for her safety. What is the master to do under such circumstances? Can he sell the ship?

The master has authority to sell his ship only in a case of extreme necessity; one which justifies and requires the sale to be made, as a proper matter of duty to the owner, to prevent a greater sacrifice, or a total ruin of the property. The necessity must be such that a prudent owner, who was uninsured, would sell rather than repair.—2 *Sumner*, 215.

It must, therefore, be a case of necessity to authorize the master to sell, such as where the vessel is wrecked or unnavigable, and he cannot procure money for the repairs; or where no repairs can be had; or where the vessel cannot be repaired without an expense of clearly more than half her value when she is repaired;* or where the vessel is in so perilous a situation, that she cannot be delivered at all, or without the hazard of an expense disproportionate to her real value.—5 *Mason*, 465.

The master has no authority to sell, even in the above cases, where either the owners or their agents, or the insurers, are not distant from the place, and can, by the earliest use of the ordinary means to convey intelligence, be informed of the situation of the vessel in time to direct the master before she will probably be lost.—13 *Pet. S. C.* 401.

Thus, if a vessel should be injured to the amount of more than half her value, yet if there was no danger of her being lost, and the master is in a situation to communicate with the owners or insurers, he would not be justified in selling her before doing so, even if a survey had been held upon her, and the surveyors had recommended a sale.—18 *Pick.* 83.

If, however, there is such an urgent necessity for the sale, as renders every delay highly perilous to the interests of all concerned, the master ought not to

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* See Note explanatory, page 80.

wait till he can hear from the owner, but should act promptly to save something for the benefit of all concerned—though but little may be saved. In such a case it will make no difference as to the validity of the sale, whether the vessel is on a home shore, or a foreign shore, whether the owner's residence be near or at a distance.—13 *Pet. S. J. C.* 401.

This power to sell in cases of necessity is, undoubtedly, one of the greatest and most difficult of the powers entrusted to the master. It was formerly held by the courts that the master could not sell in any case, on the ground that it was too dangerous a power to entrust to him; one that was open to abuse, collusion, and fraud. The necessities of modern commerce have, however, indueed an extension of the master's powers, and his right to sell in cases of extreme necessity is now recognized by all the courts, though its exercise is carefully guarded.

A sale made by the master will not be binding upon the owners unless two things concur: first, that the sale was warranted by the necessity of the case; and secondly, that it was made by the master in good faith. It will not be sufficient, therefore, to show that the master, in making the sale, acted with good faith, and in the exercise of his best discretion, but the purchaser must go further, and prove, that there was *in fact* a moral necessity for the sale, so as to make it an urgent duty upon the master to sell for the preservation of the interest of all concerned.—2 *Sumner*, 215.

The validity of the sale will, however, depend upon the state of facts, as they existed at the time of the sale, and will not be affected by subsequent events. Thus, in a case of stranding, if the state of the vessel was such, that an owner of reasonable prudence and discretion, acting upon the pressure of the occasion, would have directed the sale from a firm opinion, that she could not be delivered from the peril at all, or not without the hazard of an expense utterly disproportionate to her real value, then the master would be justified in selling, and the sale would be valid, notwithstanding that the vessel, by some fortunate accident, was afterwards got off at a comparatively small expense.—*Ibid.*

It is advisable for the master, in all cases, before resorting to a sale, to consult with others upon the necessity of the sale, and to have a survey called by the American consul, or commercial agent, if one resides at the place, or if not, then by some officer of the government of the country where the disaster happened; and if the master, with perfect good faith, calls such a survey, and the persons appointed to take it are competent in point of skill, and wholly disinterested, and they, after a full and sufficient examination of the case, advise, for the interest of all concerned, that the vessel be sold, it would seem to be the duty of the master to act according to their advice.—2 *Pick.* 249. We have seen, however, that even in such a case, the master must not sell if he can communicate with the owners easily and expeditiously, and no serious injury is likely to result from the delay.

The sale, to be binding upon the owners, must not only be warranted by the necessity of the case, but must be made by the master in good faith.

The vessel ought to be sold at public auction, as this mode of sale is less open to the charge of fraud and collusion. The master should cause as full public notice of the sale to be given, as the circumstances of the case will admit. The sale must be conducted fairly and freely; and there must be no combination to affect the biddings, or calculated to produce a sacrifice of the property.

The master cannot himself become a purchaser at the sale; and if he should purchase of the person who was the purchaser at the sale, it would afford grounds of suspicion, and the sale would not be deemed valid by the courts, unless they were satisfied it was made in perfect good faith.—5 *Mason*, 465.

So it would be a suspicious circumstance, and one that would be likely to affect the validity of the sale, if one of the surveyors who recommended the sale, was a purchaser of the wreck.—*Ibid.*

On the Delivery of Goods.—The owner of vessels employed in transporting goods for hire, whether belonging to the foreign, coasting or inland navigation, are common carriers; and it is well settled, that it is duty of a common carrier to make an actual delivery of the goods to the person entitled to receive them. In the absence, therefore, of any special contract, or of any well known and established usage, the landing of the goods by the master on the wharf, is not such a delivery to the consignee, as will discharge him, or the owners of the ship, from their duty as carriers. In regard, however, to foreign voyages, it would seem to be well settled, both in this country and in England that an actual delivery to the consignee is not necessary, but that it is sufficient for the master to land the cargo at the usual or proper wharf, and give the consignee, or person entitled to receive the goods, reasonable notice thereof.

In regard to the internal and coasting trade, there seems to be no such well established custom regulating the delivery of goods. The master must, therefore, make an actual delivery to the consignee, or person entitled to receive the goods, unless he can show a usage to the contrary, so long established and well known, as to render it probable that it was known to the consignee. (See page 82, 83.)

Liability of the Consignee.—Where a certain number of days are stipulated by the charter-party for unloading the cargo, the consignee is not bound to receive the goods as soon as the master is ready to deliver them, but is entitled to the whole period to receive them in, and if loss occurs in the intermediate time, after he has refused to receive the goods on the application of the master, the freight is not earned.—*Binn.: John.*

Demurrage.—This term is applied to designate the time during which a vessel is detained beyond that originally stipulated in loading or unloading; but it is more commonly applied to the compensation which the freighter has to pay for such detention. The freighter usually agrees to load and unload within a certain time, and comes under a subsidiary stipulation to pay so much by way of demurrage. In computing the number of days, it may be a question whether Sundays and holidays are excluded. Sometimes the demurrage is to run while the ship is detained by certain circumstances, such as waiting for convoy, or until her cargo be completed, and ceases when the convoy is ready to depart, or the ship is fully laden; and will not be continued by the vessel being detained, nor renewed on her being driven back by stress of weather. When there is a stipulation for demurrage, it is payable, though the delay be not attributable to the conduct of the freighter, but to the crowded state of the docks. Demurrage is the result of a stipulation, but it is often applied to the damages or compensation which the freighter must pay for having detained the vessel, when there is no special agreement, or beyond the time sanctioned by such agreement. Where a bill of lading has a note on the margin importing that the goods are to be removed at a certain time, otherwise a certain sum per day is to be charged for delay, whoever claims the goods under the bill becomes responsible for the sum.—*Abbott on Shipping.*

The duty of the Master to Protest in case of Accident.—It is the duty of the master to enter his protest against all losses, damages, and misfortunes which may have happened to the vessel or cargo in the course of the voyage; if he is driven by stress of weather out of the regular course of the voyage, he is *absolutely* bound to enter his protest at the first port he may arrive at; he may protest against embargoes, restraints, violations of contracts, tempests, fire, civil commotions, pirates, assailing thieves, and, in fine, against every accident that may be injurious to the voyage.

The protest should be made within twenty-four hours after his arrival at the next port after the happening of the disaster.

It is usual for ship-masters, immediately after arriving in port from a foreign voyage, to enter a general protest, to be extended on afterwards. This he does, whether he is aware of having sustained any damage from the perils of the sea or not. Should he afterwards find that the ship or cargo did sustain damage, he may then extend upon his general protest.

And if it be in the United States, a writ of survey must be taken out within the same time. This writ of survey must be given to one of the port surveyors; and if any goods should be damaged the surveyor must be called to examine their stowage; otherwise the ship will be accountable for the damaged goods. The surveyor must also be called on to see the hatches opened before the bulk is broken.

It is also necessary that a commission for a survey be taken out in a foreign port, and the survey to be present when the hatches are taken off.

Duty of the Master to procure a Pilot.—It is the duty of a master to employ a pilot to navigate his vessel into or out of a port, where it is customary to do so, or where the laws of the country require it, and if he fails to do so, and loss happens, the underwriters would not be liable.—*Rice's S. C. R.* 248. But if the loss happens at a point beyond which the pilot's service was necessary it would be otherwise.

If the master attempts to get a pilot and fails, and then, in the exercise of his best discretion, endeavors to navigate himself into port, and a loss happens, the underwriters will be liable.—2 *B. & Ad.* 380.

In New York it is held, that in every well-appointed port where pilots are to be had, a vessel arriving upon pilot ground, is bound to take a pilot, and the

ground is to be approached carefully; and if in the night, the master must hold out a light for a pilot, and wait a reasonable time for one, and approach one if he can do it with safety. If he attempts to enter the port without a pilot, or steers negligently or rashly in approaching the ground where it is unsafe to navigate without a pilot, and damages ensue, the underwriters will not be liable for them. 3 *Kent*, 176.

In cases of great danger, as in the case of a storm, if the master cannot wait with safety for a pilot, he must come in without one.—*Ibid.*

Master's Relation to the Crew.—The relation of the master to the crew has already been fully considered in the first part of this book.

Master's Relation to the Passengers.—The master's relation to the passengers is one of peculiar delicacy. His contract with them is not for mere ship-room, and personal existence on board, but for reasonable food, comforts, necessaries, and kindness. In respect to females, it proceeds yet further, and includes an implied stipulation against general obscenity, immodest conduct, and a wanton disregard of the feelings; and any violation of this implied stipulation, in any of its particulars will be punished, no less than direct personal assaults.—3 *Mason*, 242.

If any of the passengers violate the peace and good order of the ship, the master may restrain them; he cannot, however, require them to assist in working the ship. It has been thought, that in times of danger and of extreme necessity, when their services become necessary for the preservation of the lives and property on board, the master has a right to call on them for aid, but, of course, on such occasions no person would be unwilling to do what he could to afford relief to the ship.—3 *Boz. and P.* 612; 1 *Camp.* 58.

Passengers dying on board.—If any passenger die on board, the master is obliged to inventory his effects, and, if no claim be made to them within a year the master becomes proprietor of the goods, but answerable for them to the deceased's legal representatives.

MATE'S MANUAL.

RIGHTS AND DUTIES OF MATE.

In case of the absence, incapacity or death of the captain, the command and responsibility devolve on the mate. It is, therefore, of the utmost importance that every vessel should have on board a mate, having sufficient theoretic and practical knowledge of navigation and seamanship to take command in case of necessity; and a vessel sailing without such a mate would not be deemed seaworthy, at least if she were going on a long voyage.—2 *Metc.* 432.

In case the master becomes incompetent during the voyage, as where he becomes insane or otherwise incapable of discharging the duties of his office, it is the duty of the mate to assume the command of the vessel; and if the master resists him by force and violence, he may command the crew to assist him.—*Ibid.* To justify the mate in taking command, the master must be clearly incompetent to discharge his duties, as where his mind has been affected by sickness or he is insane, &c.

The mate would be liable to the same punishment as any one of the crew for confining the master. This subject of confining the master has been already considered. (See page 63.)

Where the master dies or becomes incompetent, the mate is not

bound to procure a suitable person for master, upon the ship's arrival in a port where such person could be obtained, but may take charge of her himself during the remainder of the voyage—2 *Metc.* 432.

If the master is obliged to leave the ship during the voyage, he may appoint another master over the mate. So, too, the consignees of the vessel or cargo, in a foreign port, have power to appoint a substitute in case the master dies.

The mate may render himself liable to be degraded or discharged by the master, by fraudulent, unfaithful, and illegal practices; by gross and repeated negligence, or flagrant, wilful and unjustifiable disobedience; by incapacity, brought on him by his own fault, to perform his duty, or palpable want of skill in his profession. The master cannot remove him, however, except for repeated and aggravated misconduct, or for palpable incapacity.—1 *Pet. Adm.* 247.

Where a seaman is appointed to act as mate, by the master, during the voyage, the master may remove him at his pleasure.—*Gilpin's R.* 83.

It is usually the duty of the mate to attend to the taking in and delivery of the cargo. While at sea, he superintends the sailing of the vessel under the direction of the master, and his command must be promptly obeyed by the crew, as if coming from the master. It is his duty to keep the log-book, in which he should keep a correct and minute journal of the voyage.

Neither the mate nor any subordinate officer, has authority to punish any seaman, even for improper behavior or misconduct personally, when the master is on board, except by his authority, or when the necessities of the ship's service require instantaneous punishment to compel him to do his duty. Neither should he punish a seaman in the absence of the master, if the punishment can be safely postponed till his return. (See page 59.)

The mate is entitled to be cured at the expense of the ship, in the same manner as a seaman; and, therefore, if he is put on shore from sickness for the convenience of the ship, his expenses for medicines, advice, attendance and board, are to be borne by the ship-owner. (See page 14.)—1 *Sumner*, 151.

The mate has the same remedies for the recovery of his wages as a seaman, even though he succeeds to the command of the ship by the death of the master. (See page 48)—1 *Sumner*, 151.

If he acts so improperly as to justify the master in degrading or dismissing him, he is not entitled to his wages. But if he is improperly dismissed he is entitled to them.—4 *Wash. C. C.* 338.

The Log-Book.—The log-book is kept by the chief mate. It should contain an accurate account of the ship's course, with a short history of every occurrence during the voyage. It is of the utmost importance that this should be faithfully kept, and great care should be taken to keep it clean and free from erasures and interlineations, otherwise it will be open to suspicion. It has been seen that where a seaman deserts or leaves the vessel without permission, an entry must be made of the fact in the log-book, or else his wages will not be forfeited. (See pages 40, 41.)

The statements in the log-book are also of importance in settling questions of general average, insurance, salvage, and other controversies.

EMIGRANT PASSENGER LAW.

PASSED CONGRESS, MARCH, 1855.

AN ACT to regulate the carriage of passengers in steamships, and other vessels.

SEC. 1. No master of any vessel, owned in whole or in part by a citizen of the United States, or by a citizen of any foreign country, shall take on board such vessel, at any foreign port or place, other than foreign contiguous territory of the United States, a greater number of passengers than in proportion of one to every two tons of such vessel, computing two children over one and under eight years of age as one passenger. The spaces appropriated for the use of passengers shall not be occupied by stores or other goods not the personal baggage of such passengers, shall be in the following proportions, viz: On the main and poop decks, and in the deck-houses, one passenger for each sixteen clear superficial feet of deck, if the height or distance between the decks shall not be less than six feet; and on the lower deck, (not being an orlop deck,) if any, one passenger for eighteen such clear superficial feet, if the height or distance between the decks or platforms shall not be less than six feet; but no passenger shall be carried upon any deck where the height or distance between decks is less than six feet. If any master of a vessel shall take on board, at any port or place within the jurisdiction of the United States, any greater number of passengers than in the proportion aforesaid, to the space or tonnage aforesaid, with intent to carry the same to any foreign port other than foreign contiguous territory as aforesaid, every such master shall be deemed guilty of a misdemeanor, and upon conviction thereof shall, for each passenger taken on board beyond the limit or space aforesaid, be fined in the sum of fifty dollars, and may also be imprisoned, not exceeding six months; but should it be necessary, for the safety or convenience of the vessel, that any portion of her cargo, or any other article, should be stored in any of the decks, cabins, or other places appropriated to the use of passengers, the same may be placed in inclosures prepared for the purpose, or an exterior surface impervious to the waves, capable of being cleansed in like manner as the decks. In no case, however, shall the places thus provided be deemed to be a part of the space allowable for the use of passengers, but the same shall be deducted therefrom; and in all cases where prepared or used, the upper surface of said inclosed spaces shall be deemed and taken to be the deck from which measurement shall be made for all the purposes of this act. It is also provided that one hospital in the spaces appropriated to passengers, and separated therefrom by any appropriate partition, and furnished as its purposes require, may be prepared, and when used, may be included in the space allowable for passengers, but the same shall not occupy more than one hundred superficial feet of deck or platform: *Provided*, That on board two-deck ships, where the height between the decks is seven and one half feet or more, fourteen clear superficial feet of deck shall be the proportion required for each passenger.

2. No such vessel shall have more than two tiers of berths, and the interval between the lowest part thereof and the deck shall not be less than nine inches, and the berths shall be well constructed, and separated from each other by partitions, and shall be at least six feet in length, and at least two feet in width, and each berth shall be occupied by no more than one passenger; but double berths of twice the above width may be constructed, each berth to be occupied by no more, and by no other, than two women, or by one woman and two children under the age of eight years, or by husband and wife, or by a man and two of his own children under the age of eight years, or by two men, members of the same family; and if there shall be any violation of this section in any of its provisions, then the master of the vessel and the owners thereof shall severally forfeit and pay the sum of five dollars for each passenger on board of said vessel on such voyage.

3. All vessels, whether of the United States or any foreign country, having sufficient capacity or space for fifty or more passengers, (other than cabin passengers,) shall have on the upper deck, for the use of such passengers, a house over the passage-way leading to the apartments allotted to such passengers below deck, firmly secured to the deck or combings of the hatch, with two doors, the sills of which shall be at least one foot above the deck, so constructed that one door or window in each house may at all times be left open for ventilation; and all vessels so employed, and having the capacity to carry 150 such passengers or more, shall have two such houses; and the stairs or ladder leading down to the aforesaid apartment shall be furnished with a hand-rail of wood or strong rope; but booby hatches may be substituted for such houses.

4. Every vessel so employed, and having the legal capacity for more than one hundred such passengers, shall have at least two ventilators, one of which shall be inserted in the after part of the apartment, and the other shall be placed in the forward portion of the apartment, and one of them shall have an exhausting cap to carry off the foul air, and the other a receiving cap to carry down the fresh air; said ventilators shall have a capacity proportioned to the size of the apartment to be purified, namely: If the apartment will authorize the reception of 200 passengers, the capacity of such ventilators shall each be equal to a tube of twelve inches diameter in the clear, and in proportion for larger or smaller apartments; and all said ventilators shall rise at least four feet six inches above the upper deck, and be of the most approved form and construction; but if it shall appear, from the report to be made and approved, that such vessel is equally well ventilated by any other means, such other means of ventilation shall be deemed and held to be a compliance with the provisions of this section.

5. Every vessel carrying more than fifty passengers, shall have for their use on deck, at least one caboose or cooking range, the dimensions of which shall be equal to four feet long and one foot six inches wide for every 200 passengers; and in this ratio, for a greater or less number of passengers; but nothing herein contained shall take away the right to make such arrangements for cooking between decks.

6. All vessels employed as aforesaid shall have on board, for the use of such passengers, at the time of leaving the last port whence such vessel shall sail, well secured under deck, for each passenger, at least twenty pounds of good navy bread, fifteen pounds of rice, fifteen pounds of oatmeal, ten pounds of wheat flour, fifteen pounds of peas and beans, twenty pounds of potatoes, one pint of vinegar, sixty gallons of fresh water, ten pounds of salted pork, and ten pounds of salt beef free of bone, all to be of good quality; but at places where either rice, oatmeal, wheat flour, or peas and beans, cannot be procured, of good quality and on reasonable terms, the quantity of either or any of the other last named articles may be increased and substituted therefor; and in case potatoes cannot be procured on reasonable terms, one pound of either of said articles may be substituted in lieu of five pounds of potatoes; and the captains shall deliver to each passenger at least one-tenth part of the aforesaid provisions weekly, commencing on the day of sailing, and at least three quarts of water daily; and if the passengers shall at any time be put on short allowance during any voyage, the master or owner shall pay to each and every passenger who shall have been put on short allowance, the sum of three dollars for each and every day they may have been put on short allowance; and it shall be the duty of the captain to cause the food and provisions of all the passengers to be well and properly cooked daily, and to be served out and distributed to them at regular and stated hours, by messes, or in such other manner as shall be deemed best. If the captain shall wilfully fail to furnish and distribute such provisions, cooked as aforesaid, he shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined not more than one thousand dollars, and shall be imprisoned for a term not exceeding one

year; *Provided*, That the enforcement of this penalty shall not affect the civil responsibility of the captain or master, and owners, to such passengers as may have suffered from said default.

7. The captain is authorized to maintain good discipline and such habits of cleanliness among passengers, as will tend to the preservation and promotion of health; and to that end he shall cause such regulations as he may adopt for this purpose to be posted up, before sailing, on board such vessel, in a place accessible to such passengers, and shall keep the same so posted up during the voyage; and it is the duty of said captain to cause the apartments occupied by such passengers to be kept at all times in a clean, healthy state, and the owners are required to construct the decks, and all parts of said apartment, so that it can be thoroughly cleansed; and they shall also provide a safe, convenient water-closet for the exclusive use of every one hundred such passengers. And when the weather is such that said passengers cannot be mustered on deck with their bedding, it shall be the duty of the captain to cause the deck occupied by such passengers to be cleansed with chloride of lime, or some other equally efficient disinfecting agent, and also at such other times as said captains may deem necessary.

8. The master and owner of any vessel so employed, which shall not be provided with the house or houses over the passageways, or with ventilators, or with the cabooses or cooking ranges, with the houses over them, shall severally forfeit and pay to the United States the sum of $200 for each and every violation of the provisions, and $50 dollars for each and every neglect or violation of any of the provisions of the seventh section of this chapter.

9. The Collector of the Customs at any port of the United States, at which any vessel so employed shall arrive or depart, shall direct one or more of the Inspectors of the Customs to examine such vessel, and report, in writing, whether the requirements of law have been complied with, and, if such report shall state such compliance, and shall be approved by such Collector, it shall be deemed and held as prima facie evidence thereof.

10. The provisions, requisitions, penalties, and liens of this act, are hereby extended and made applicable to all spaces appropriated to the use of steerage passengers, in vessels propelled, in whole or in part, by steam, and navigating between the ports, in this act named, and to such vessels, and to the masters thereof; and so much of the act, entitled "An act to amend an act, entitled 'An act to provide for the better security of the lives of 'passengers on board of vessels propelled, in whole or in part, by steam, 'and for other purposes,'" approved Aug. 30, 1852, as conflicts with this act, is hereby repealed; and the space appropriated to the use of steerage passengers in vessels as above propelled, is hereby subjected to the supervision and inspection of the Collector of the Customs at any port of the United States at which any such vessel shall arrive or depart; and the same shall be examined and reported in the same manner.

11. Vessels bound from any port in the United States to any port in the Pacific Ocean, or from any such port to any port in the United States on the Atlantic, shall be subject to the foregoing provisions regulating the carriage of passengers in merchant vessels, except so much as relates to provisions and water; but the owners and masters of all such vessels shall in all cases furnish to each passenger the daily supply of water therein mentioned; and they shall furnish a sufficient supply of good and wholesome food, properly cooked; and in case they shall fail so to do, or shall provide unwholesome or unsuitable provisions, they shall be subject to the penalty provided in the sixth section of this chapter, in case the passengers are put on short allowance of water or provisions.

12. The captain or master of any vessel arriving in the United States, from any foreign place, at the same time that he delivers a manifest of the cargo, and if there be no cargo, then at the time of making entry of the

vessel, shall also deliver to the collector of the district a list or manifest of all the passengers taken on board of the said vessel at any foreign port, in which list or manifest it shall be the duty of the said master to designate, particularly, the age, sex, and occupation of the said passengers, respectively, the part of the vessel occupied by each during the voyage, the country to which they severally belong, and that of which it is their intention to become inhabitants; and shall further set forth whether any, and what number, have died on the voyage; which list or manifest shall be sworn to by the said master in the same manner as directed by law in relation to the manifest of the cargo; and the refusal or neglect of the master to comply with the provisions of this section, shall incur the same penalties, disabilities, and forfeitures, as are provided for a refusal or neglect to report and deliver a manifest of the cargo.

13. Each and every Collector of the Customs, to whom such manifest or list of passengers shall be delivered, shall quarter-yearly return copies thereof to the Secretary of State of the United States, to be laid before Congress.

14. In case there shall have occurred on board any vessel any deaths among the passengers, (other than cabin passengers,) the captain or owner, or consignee shall, within twenty-four hours after the time within which the report and list or manifest of passengers is required to be delivered to the Collector of the Customs, pay to the said collector the sum of ten dollars for each and every passenger above the age of eight years who shall have died on the voyage, by natural disease; and the said collector shall pay the money thus received to any board of commission appointed by, and acting under the authority of the State within which the port where such vessel arrived is situated, for the care and protection of sick, indigent or destitute emigrants; *Provided*, That the payment shall in no case be awarded to any board or association formed for the protection of any particular class of emigrants, or of any particular nation or creed; and if the master, captain, owner, or consignee refuse or neglect to pay the Collector the sums of money required, within the time, he or they shall severally forfeit and pay the sum of fifty dollars in addition for each and every passenger upon whose death the same has become payable.

15. The amount of the several penalties imposed by the foregoing provisions, regulating the carriage of passengers in merchant vessels, shall be liens on the vessel violating those provisions.

16. Every vessel which shall be employed by the American Colonization Society or the Colonization Society of any State, to transport, and which shall actually transport, from any port of the United States to any colony on the West Coast of Africa, colored emigrants to reside there, shall be subjected to the operation of the foregoing provisions.

17. The Collector of the Customs shall examine such emigrant vessel on its arrival at his port, and ascertain and report to the Secretary of the Treasury, at the time of sailing, the length of the voyage, the ventilation, the number of passengers, their space on board, their food, the native country of the emigrants, the number of deaths, the age and sex of those who died during the voyage, together with his opinion of the cause of the mortality, if any, on board, and, if none, what precautionary measures, arrangements, or habits, are supposed to have had any, and what agency in causing the exemption.

18. This act shall take effect, with respect to vessels sailing from ports in the United States, on the eastern side of the continent, within thirty days from the time of its approval; and, with respect to vessels sailing from ports in the United States, on the western side of the continent, and from ports in Europe, within sixty days of the time of its approval, and with respect to vessels sailing from ports in other parts of the world, within six months from the time of its approval.

19. From and after the time that this act shall take effect, all preceding legislation inconsistent herewith is hereby repealed.

APPENDIX.

UNITED STATES NAVY RATION.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America, in General Congress assembled:* —

SEC. 1. Relates to the daily allowance.

DAYS OF THE WEEK.	POUNDS.						OUNCES.						FRAC'NS OF A PT.			
	Beef.	Pork.	Flour.	Rice.	Raisins or dried Fruit.	Pickles or Cranberries.	Biscuit.	Sugar.	Either. Tea.	Either. Coffee.	Either. Cocoa.	Butter.	Cheese.	Beans.	Molasses.	Vinegar.	Spirit.
Sunday,	1		½		¼		14	2		1	1						¼
Monday,		1					14	2	¼	1	1			½			¼
Tuesday,	1			½			14	2	¼	1	1	2	2				¼
Wednesday,		1				¼	14	2	¼	1	1			½			¼
Thursday,	1		½		¼		14	2	¼	1	1						¼
Friday,	1			½			14	2	¼	1	1	2	2		½		¼
Saturday.		1				¼	14	2	¼	1	1			½		½	¼
Weekly quantity,	4	3	1	1	½	½	98	14	1¾	7	1	4	4	1½	½	½	1¾

SEC. 2. Fresh meat may be substituted for salt beef or pork, and vegetables and sauerkraut for the other articles usually issued with the salted meats, allowing one and a quarter pounds of fresh meat for one pound of salted beef or pork, and regulating the quantity of vegetables, or sauerkraut, so as to equal the value of those articles for which they may be substituted.

SEC. 3. That, should it be necessary to vary the above-described daily allowance, it shall be lawful to substitute one pound of soft bread, or one pound of flour, or half a pound of rice, for fourteen ounces of biscuit; half a pint of wine for a gill of spirits; half a pound of rice for half a pint of beans or pease; half a pint of beans or pease for half a pound of rice.

When it may be deemed expedient, the articles of butter, cheese, raisins, dried apples, or other dried fruits, pickles and molasses, may be substituted for each other and for spirits: *Provided*, The articles substituted shall not exceed in value the article for which it may be issued, according to the scale of prices.

SEC. 4. Relates to cases of necessity when the daily allowance may be diminished or varied.

SEC. 5. Permits the relinquishment of the spirit part of the ration, and allows money to be paid in lieu thereof.

VALUATION OF THE WEEKLY QUANTITY.

3 pounds of pork, at 7½ cents per pound, 22½ cents; 4 pounds of beef, at 6 cents per pound, 24 cents; 1 pound of flour, at 4 cents per pound, 4 cents; 1 pound of rice, at 3 cents per pound, 3 cents; ½ pound of raisins, &c., at 13 cents per pound, 6½ cents; ½ pound of pickles, &c., at 12½ cents per pound, 6¼ cents; 98 ounces of biscuit, at 4 cents per pound, 24½; 14 ounces of sugar, at 8 cents per pound, 7 cents; 1¾ ounces of tea, 7 ounces of coffee, 7 ounces of cocoa, (all of the same value,) at 20 cents per pound, 8¾ cents; 4 ounces of butter, at 23 cents per pound, 5¾ cents; 4 ounces of cheese, at 16 cents per pound, 4 cents; 1½ pints of beans, at 24 cents per gallon, 4½ cents; ½ pint of molasses, at 64 cents per gallon, 4 cents; ½ pint of vinegar, at 20 cents per gallon, 1¼ cents; 1¾ pints of spirit, at 64 cents per gallon, 14 cents. Averaging 20 cents per day, or weekly, 1.40.

ENGLISH SCALE FOR VICTUALLING MERCHANT VESSELS, FOR ONE LUNAR MONTH.

[Made up from a Scale promulgated under the authority of a Committee of the General Ship Owners' Society of London.]

No. of Men to be victualled for a Lunar month.	PROPORTION OF EACH SPECIES OF PROVISION FOR A LUNAR MONTH, OR 28 DAYS.							
	Salted Beef and Pork, each.	Flour.	Rice.	Pease.	In lieu of Spirits.			Water.
					Sugar.	Tea.	Coffee, Cocoa, &c. as substitutes	
	lbs. oz.	lbs.	lbs.	gal. pts	lbs.	lbs. oz.	lbs. oz.	galls.
1	17 8	6	4	0 3½	3	0 7	1 12	21
2	35 0	12	8	0 7	6	0 14	3 8	42
3	52 8	18	12	1 2½	9	1 5	4 4	63
4	70 0	24	16	1 6	12	1 12	6 0	84
5	87 8	30	20	2 1½	15	2 3	8 12	105
6	105 0	36	24	2 5	18	2 10	10 8	126
7	122 8	42	28	3 0½	21	3 1	12 4	147
8	140 0	48	32	3 4	24	3 8	14 0	168
9	157 8	54	36	3 7½	27	3 15	15 12	189
10	175 0	60	40	4 3	30	4 6	17 8	210
11	192 8	66	44	4 6½	33	4 13	19 4	231
12	210 0	72	48	5 2	36	5 4	21 0	252
13	227 8	78	52	5 5½	39	5 11	22 12	273
14	245 0	84	56	6 1	42	6 2	24 8	294
15	262 8	90	60	6 4½	45	6 9	26 4	315
16	280 0	96	64	7 0	48	7 0	28 0	336
17	297 8	102	68	7 3½	51	7 7	29 12	357
18	315 0	108	72	7 7	54	7 14	31 8	378
19	332 8	114	76	8 2½	57	8 5	33 4	399
20	350 0	120	80	8 6	60	8 12	35 0	420
25	437 8	150	100	10 7½	75	10 15	43 12	525
30	525 0	180	120	13 1	90	13 2	52 8	630
35	612 8	210	140	15 2½	105	15 5	61 4	735
40	700 0	240	160	17 4	120	17 8	70 0	840
45	787 8	270	180	19 5½	135	19 11	78 12	945
50	875 0	300	200	21 7	150	21 14	87 8	1050

REMARKS.

1. As much bread is allowed to seamen as they can eat without waste

2. As the allowance of salted beef and pork is the same, the second column contains the quantity of *each*, and in taking the proportions from the table, the amount must be doubled, to obtain the necessary supply of salted provisions; or taken out twice, once for salt beef, and then for salt pork.

3. Should the substitutes for tea be given for 14 days, half only of each quan

tity expressed in the 7th and 8th columns will be necessary; and thus for any similar proportion of time.

PROBLEM.

Given the number of days for which it is required to victual a ship's crew, consisting of a given complement of men, with each species of provision.

Multiply the proportions in the columns against the complement of men, by the number of months for which they are to be provisioned, and the products will be the required quantities

EXAMPLE.

A ship's crew, consisting of 40 men, are to be provisioned for five lunar months, or 140 days: required the proportion of each species of sea provisions.

Against 40 in the table (the complement of men) will be found the quantities required for one lunar month which multiplied by five, produces the following quantities of each kind of provisions:—viz., 3500 lbs. of beef, and the *same* quantity of pork, 1200 lbs. of flour; 800 lbs. of rice; 87 gals. 4 pts. of pease; 600 lbs of sugar; 87 lbs. 8 oz of tea, or of its equivalents, coffee, cocoa, or chocolate 350 lbs.; and 4200 galls. of water.

REMARKS.

The salt beef being generally cut into pieces of 8 lbs. each, and the salt pork in 4 lbs. pieces; the pounds of salt beef being divided by eight, and the pounds of salt pork by four, their respective quotients will give the number of pieces of each kind of meat. Thus, in the above example, the quantity will be 437 1-2 pieces of salt beef, and 875 pieces of salt pork.

SHORT ALLOWANCE.

In the English Merchant Service, if the crew are put on short allowance, they are allowed, while such short allowance continues, four pence per day, if the reduction is one-third, and eight pence per day if more than one-third.

SUBSTITUTES.

1 oz. of Coffee, or Cocoa, or Chocolate, may be substituted for one-fourth oz. of Tea.

Molasses for Sugar; the quantity to be one-half more.

1 lb. Potatoes or Yams to be considered equal to half a pound of Flour or Rice or a quarter of a pint of Pease.

When Fresh Meat is issued, the proportion to be 2 lbs. per man, per day, in lieu of Salt Meat, Flour, Rice, and Pease.

The allowance of Small Stores being considered as an equivalent for Spirits, Spirits are only to be issued under particular circumstances at the discretion of the Master.

Lime or Lemon Juice, Sugar, and Vinegar, are to be served out to the Crew whenever they shall have been consuming Salt Provisions for *Ten Days*. The Lime or Lemon Juice and Sugar daily, after the rate of half an ounce of each per day, and the Vinegar weekly, at the rate of half a pint per week to each person as long as the consumption of Salt Provisions is continued.

TABLE FOR CALCULATING SEAMEN'S & BOATMEN'S WAGES, FROM 5 TO 17 DOLLARS PER MONTH.

No. of Days.	SEAMEN'S WAGES BY THE DAY AND MONTH.												
	mo. $ 5·00	mo. $ 6·00	mo. $ 7·00	mo. $ 8·00	mo. $ 9·00	mo. $ 10·00	mo. $ 11·00	mo. $ 12·00	mo. $ 13·00	mo. $ 14.00	mo. $ 15·00	mo. $ 16·00	mo. $ 17·00
1	0·17	0·20	0·23	0·27	0·30	0·33	0·37	0·40	0·43	0·47	0·50	0·53	0·57
2	0·33	0·40	0·47	0·53	0·60	0·67	0·73	0·80	0·87	0·93	1·00	1·07	1·13
3	0·50	0·60	0·70	0·80	0·90	1·00	1·10	1·20	1·30	1·40	1·50	1·60	1·70
4	0·67	0·80	0·93	1·07	1·20	1·33	1·47	1·60	1·73	1·87	2·00	2·13	2·27
5	0·83	1·00	1·17	1·33	1·50	1·67	1·83	2·00	2·17	2·33	2·50	2·67	2·83
6	1·00	1·20	1·40	1·60	1·80	2·00	2·20	2·40	2·60	2·80	3·00	3·20	3·40
7	1·17	1·40	1·63	1·87	2·10	2 33	2·57	2·80	3·03	3·27	3·50	3·73	3·97
8	1·33	1·60	1·87	2·13	2·40	2·67	2·93	3·20	3·47	3·73	4·00	4·27	4·53
9	1·50	1·80	2·10	2·40	2·70	3·00	3·30	3·60	3·90	4·20	4·50	4 80	5·10
10	1·67	2·00	2·33	2·67	3·00	3·33	3·67	4·00	4·33	4·67	5·00	5·33	5·67
11	1·83	2·20	2·57	2·93	3·30	3·67	4.03	4·40	4·77	5·13	5·50	5·87	6·23
12	2·00	2·40	2·80	3·20	3·60	4·00	4·40	4·80	5·20	5·60	6·00	6·40	6·80
13	2·17	2·60	3·03	3·47	3·90	4·33	4·77	5·20	5·63	6·07	6·50	6·93	7·37
14	2·33	2·80	3·27	3·73	4·20	4·67	5·13	5·60	6·07	6·53	7·00	7·47	7·93
15	2·50	3·00	3·50	4·00	4·50	5·00	5·50	6·00	6·50	7·00	7·50	8·00	8·50
16	2·67	3·20	3·73	4·27	4·80	5·33	5·87	6·40	6·93	7·47	8·00	8·53	9·07
17	2·83	3·40	3·97	4·53	5·10	5·67	6·23	6·80	7·37	7·93	8 50	9·07	9·63
18	3.00	3·60	4·20	4·80	5·40	6·00	6·60	7·20	7·80	8·40	9·00	9·60	10·20
19	3·17	3·80	4·43	5·07	5·70	6·33	6·97	7·60	8·23	8·87	9·50	10·13	10·77
20	3·33	4·00	4·67	5·33	6·00	6·67	7·33	8·00	8·67	9·33	10·00	10·67	11·33
21	3·50	4·20	4·90	5·60	6·30	7·00	7·70	8·40	9·10	9·80	10·50	11·20	11·90
22	3·67	4·40	5·13	5·87	6·60	7·33	8·07	8·80	9·53	10·27	11·00	11·73	12·47
23	3·83	4·60	5·37	6·13	6·90	7·67	8·43	9·20	9·97	10·73	11·50	12·27	13·03
24	4·00	4·80	5·60	6·40	7·20	8·00	8·80	9·60	10·40	11·20	12·00	12·80	13·60
25	4·17	5·00	5·83	6·67	7·50	8·33	9·17	10·00	10·83	11 67	12·50	13·33	14·17
26	4·33	5·20	6·07	6·93	7·80	8·67	9·53	10 40	11·27	12·13	13·00	13·87	14·73
27	4·50	5·40	6·30	7·20	8·10	9·00	9·90	10·80	11·70	12·60	13·50	14·40	15·30
28	4·67	5·60	6·53	7·47	8·40	9·33	10·27	11·20	12·13	13·07	14·00	14·93	15·87
29	4·83	5·80	6·77	7·73	8·70	9·67	10·63	11·60	12·57	13 53	14·50	15·47	16·43
30	5·00	6·00	7·00	8·00	9·00	10·00	11·00	12·00	13·00	14·00	15 00	16·00	17·00
¼	0·04	0 05	0·06	0·07	0·08	0·08	0·09	0·10	0·11	0·12	0·13	0·13	0·14
½	0 08	0·10	0·12	0·13	0·15	0·17	0·18	0·20	0·22	0·23	0·25	0·27	0·28
¾	0·12	0·15	0·17	0.20	0·23	0·25	0·27	0·30	0·32	0 35	0·38	0·40	0·42

N. B. It is the practice in business, in casting accounts, whenever there is a half cent, to take one cent; for a fraction less than half cent, nothing is taken.

Seamen are entitled to demand and receive from the master, one third part of the wages which shall be due them, at every port where the vessel unlades and delivers her cargo before the voyage is ended; unless the contrary is stipulated in the Shipping Articles.

SEAMEN'S AND BOATMEN'S WAGES, — CONTINUED.

No. of Days.	SEAMEN'S WAGES BY THE DAY AND MONTH.												
	mo. $ 18·00	mo. $ 19·00	mo. $ 20·00	mo. $ 21·00	mo. $ 22·00	mo. $ 23 00	mo. $ 24·00	mo. $ 25·00	mo. $ 26·00	mo. $ 27·00	mo. $ 28·00	mo. $ 29·00	mo. $ 30·00
1	0·60	0·63	0·67	0·70	0·73	0·77	0·80	0·83	0·87	0·90	0·93	0·97	1·00
2	1·20	1·27	1·33	1·40	1·47	1·53	1·60	1·67	1·73	1·80	1·87	1·93	2·00
3	1·80	1·90	2·00	2·10	2·20	2·30	2·40	2·50	2.60	2·70	2·80	2·90	3·00
4	2·40	2·53	2·67	2·80	2·93	3·07	3·20	3·33	3·47	3·60	3·73	3·87	4·00
5	3·00	3·17	3·33	3·50	3·67	3·83	4·00	4·17	4·33	4·50	4·67	4·83	5·00
6	3·60	3·80	4·00	4·20	4·40	4·60	4·80	5·00	5·20	5·40	5·60	5·80	6·00
7	4·20	4·43	4 67	4·90	5·13	5·37	5·60	5·83	6·07	6·30	6·53	6·77	7·00
8	4·80	5·07	5·33	5·60	5·87	6·13	6·40	6·67	6·93	7·20	7·47	7·73	8·00
9	5·40	5·70	6·00	6·30	6·60	6·90	7·20	7·50	7·80	8·10	8·40	8·70	9·00
10	6·00	6·33	6·67	7·00	7·33	7·67	8·00	8·33	8·67	9·00	9·33	9·67	10·00
11	6·60	6·97	7·33	7·70	8·07	8·43	8·80	9·17	9·53	9·90	10·27	10·63	11·00
12	7·20	7·60	8·00	8·40	8·80	9·20	9·60	10·00	10·40	10·80	11·20	11·60	12·00
13	7·80	8·23	8·67	9·10	9·53	9·97	10·40	10·83	11·27	11·70	12·13	12·57	13·00
14	8·40	8·87	9·33	9·80	10·27	10 73	11·20	11·67	12·13	12·60	13·07	13·53	14·00
15	9·00	9·50	10·00	10·50	11·00	11·50	12·00	12·50	13·00	13·50	14·00	14·50	15·00
16	9·60	10·13	10·67	11·20	11 73	12·27	12·80	13·33	13·87	14·40	14·93	15·47	16·00
17	10·20	10·77	11·33	11·90	12·47	13·03	13·60	14·17	14·73	15·30	15·87	16·43	17·00
18	10·80	11·40	12·00	12·60	13·20	13·80	14·40	15·00	15·60	16 20	16·80	17·40	18·00
19	11·40	12·03	12·67	13·30	13·93	14·57	15·20	15·83	16·47	17·10	17·73	18·37	19·00
20	12 00	12·67	13.33	14·00	14·67	15·33	16·00	16·67	17·33	18·00	18·67	19·33	20·00
21	12·60	13·30	14·00	14·70	15·40	16·10	16·80	17·50	18·20	18·90	19·60	20.30	21·00
22	13·20	13·93	14·67	15·40	16·13	16·87	17·60	18·33	19·07	19·80	20 53	21·27	22·00
23	13·80	14·57	15·33	16·10	16·87	17·63	18·40	19·17	19·93	20·70	21·47	22·23	23·00
24	14·40	15·20	16·00	16·80	17·60	18·40	19·20	20·00	20·80	21·60	22·40	23·20	24·00
25	15 00	15·83	16·67	17·50	18·33	19·17	20·00	20·83	21·67	22·50	23·33	24·17	25·00
26	15·60	16·47	17·33	18·20	19·07	19·93	20·80	21·67	22·53	23·40	24·27	25·13	26·00
27	16·20	17·10	18·00	18·90	19·80	20·70	21·60	22·50	23·40	24·30	25·20	26·10	27·00
28	16·80	17·73	18·67	19·60	20·53	21·47	22·40	23·33	24·27	25·20	26·13	27·07	28·00
29	17·40	18·37	19·33	20·30	21·27	22·23	23·20	24·17	25·13	26·10	27·07	28·03	29·00
30	18·00	19·00	20·00	21·00	22·00	23·00	24·00	25·00	26·00	27·00	28·00	29·00	30·00
¼	0·15	0·16	0·17	0·18	0·18	0·19	0·20	0·21	0 22	0·23	0.23	0 24	0·25
½	0·30	0·32	0 33	0·35	0·37	0·38	0·40	0·42	0·43	0·45	0·47	0·48	0·50
¾	0·45	0·47	0·50	0·53	0·55	0·57	0·60	0·62	0·65	0·68	0·70	0·72	0.75

If a Seaman's Wages are not paid within ten days after the voyage is ended, he may libel the vessel. But if he is bound to remain and assist in discharging the cargo, then he cannot attach the vessel until ten days after the cargo is discharged, unless she is going to sail before that time. If the sailor is discharged at the end of the voyage, and before the cargo is unloaded, then he may proceed immediately against the vessel.

RULES FOR DUNNAGING.

If goods should be damaged by improper stowage, the master and owners will be liable for the damage. It would therefore be better for the master, in all cases, personally to attend to the dunnaging of the cargo, and not trust it to an irresponsible stevedore, who cares little or nothing for the losses that occur, provided he gets paid for his labor. It is usually the duty of the *second* officer to attend to the dunnaging, chocking, and securing of the cargo; but he is so frequently called off on other duties, that it is almost impossible for himto give it tht attention which its importance requires. The master must also remember that it is no excuse for him, that he trusted the stowage to a stevedore, or to his second officer; and if he has engagements which prevents his attendance, he ought to leave careful directions with the officer having charge of the stowage, as to the manner in which the goods are to be stowed; and if these directions are not obeyed, and loss is occasioned thereby to the master, he would undoubtedly have a claim against such officer for neglect of duty.

If the cargo consists of goods liable to be injured by moisture, the wood used for dunnage should be perfectly dry. It sometimes has this appearance, but after being heated by close confinement in a ship's hold, moisture evaporates from it, and damages the goods. Such wood, therefore, ought never to be stowed among such goods.

A full built ship, having a cargo liable to be injured by water, should have at least *six inches* of dunnage on the flat of the floor, *nine inches* in the round of the bilge; on the sides in the lower hold, above the round of the bilge, *three inches;* on the sides between decks, *two inches;* care being always taken that the dunnage be such as to keep the goods thus far from the sides. On the lower deck the dunnage should be at least *one inch* thick, and so placed as to keep the goods that distance from the decks. Strips of board, small wood, and split bamboo are mostly used in dunnaging the lower decks; and it is advisable, where it can be done, to lay the dunnage athwartships, for if the water gets on the deck, it is not so likely to be pent up and to damage the goods by the rolling of the vessel, but runs more readily to the waterways, and into the scuppers.

Boxes of sugar and cases of goods require only two or more strips of dunnage, and dry barrels the same; but coffee and grain in bags, or hemp, and many other articles, require a continuous floor of dunnage, not only on the deck, but up the sides.

Dunnage laid on the deck, should, if laid athwartships, be left from *one* to *two inches* from the waterways. Dunnage laid close together should be raised up from the deck on each side, to give a free watercourse, otherwise damage may occur from the water getting over the dunnage.

Goods less flexible, such as bales of domestics, broadcloths, manilla hemp, &c. do not require the dunnage to be laid so close but that room for watercourses may be left between the strips. In dunnaging, however, it is always best to be on the safe side, and have too much rather than too little. It not unfrequently happens, that strips of board, sticks of wood, and bamboo, are put up and down the sides of the ship for dunnage, six, nine, and even twelve inches apart, and bags of coffee, corn, and other flexible goods stowed against it; where this is the case, they are pressed in between the dunnage by the weight of the cargo above, rendering the dunnage comparatively useless. Mats are sometimes put up against such dunnage, but they afford little or no protection to the goods. Not only coffee and grain, in bags, are liable to be injured by this description of dunnage but hides, and many other less flexible goods.

Sharp ships. with *fifteen, twenty, and thirty inches* dead rise, do not require so much dunnage on the flat of the floor, nor in the bilge. More goods are damaged in the bilges than on the floors—*three-fifths* of all the goods damaged in the bottoms of our modern-built ships being damaged in the bilges, for when the ship is sailing or lying on her side, the water does not reach the pumps,—unless she is provided with bilge-pumps.

Coffee, Corn, Sumach, and other articles in Bags.—These articles require a continuous floor of dunnage not only on the bottom but on the deck and up the sides of the ship, otherwise the grain in the bags would press between the strips of dunnage against the sides of the ship, as before stated. Where merchandize in bags forms only a part of the cargo, the bags should be stowed on the other cargo, and the cantlines of the casks filled in with wood and covered with boards, to prevent the chafing of the bags. Care should be taken to see that the bags are strong, and that there is no danger of their bursting. Serious disasters have occurred, and many lives and much property been lost in consequence of a want of attention to the quality and strength of the bags; where the bags burst, the grain invariably finds its way to the pump-well, choking the pumps and rendering them useless.

Sugar in Boxes or Casks.—If in boxes, it may be dunnaged by strips of board, sticks of wood, and bamboo, two or more strips under or against each box being sufficient, provided they are of a proper thickness. Sugar in hogsheads requires bedding and quoining; and both hogsheads and boxes should be well chocked. Several tiers of sugar boxes may be stowed with safety; the boxes being sufficiently strong, if well stowed, to sustain the weight; but this is not the case with sugar in hogsheads.

Dry Goods of all descriptions—These should be dunnaged two, three, six, and nine inches from the bottom, bilge and sides, according to the rule laid down in the first part of this article for dunnaging a cargo liable to be injured by water. Care should be taken that they are closely stowed, and well chocked and secured, so that the rolling and pitching of the ship will neither loosen nor chafe them; great damage is often done to goods by the chafing of the bales.

Corn or other Grain in bulk.—So many accidents have happened in consequence of loading grain in bulk, that the underwriters will not generally insure either the vessel or cargo thus loaded (small coasting vessels excepted.) If, however, it becomes necessary to load a vessel in this way, four or more strong bulk-heads should be put up, two at the ends of the ship, reserving the peak and run, and the other two, or more, at an equal distance apart, and a tight, well-secured platform made in the bottom of the ship, and carried above the bilge at a sufficient distance from the ceiling; this being done, strips of plank should be nailed up and down the sides of the ship from four to six inches apart, and across these pieces boards are to be nailed in such a manner as to turn the water from the cargo—thus, the first board is nailed hard up against the beams of the deck, the upper edge of the second board is then placed so as to lap the lower edge of the first board, the upper edge of the third board is then placed so as to lap the lower edge of the second, and so on, giving to the sides of the boards next to the sides of the ship the appearance of clapboards on a house. Great care must be taken so to board up the vessel as to prevent the grain from getting between the boards and the ceiling of the ship and to the pump-well; the forward and after bulk-heads should be very strongly secured, as the pressure against them, when the grain settles, is much greater than is usually supposed. Great care must also be taken that the bulkheads and shifting plank be well secured, and fitted up closely to the deck, and that the space, whether in the hold or between decks, be filled up. The greatest danger to be feared, where grain is loaded in bulk, is, that the grain will get to the pumps and choke them; the master, therefore, cannot be too careful in taking precautions to prevent it Small coasting vessels continue to carry grain in bulk from port

port with a degree of safety, using shifting boards and bulkheads, and filling up.

Cotton.—Little or no dunnage is necessary, except on the ballast, and not even there if the ballast is clean and dry stone; but if the ballast be sand or gravel, or dirty and damp stone, then boards or planks must be put over it so as protect the cotton from the dampness.

Losses have recently been experienced by ship-owners in consequence of one side of the bag or covering of the cotton rotting away and leaving the cotton exposed. This is probably occasioned by the cotton's lying on the ground at the port of lading; and the master, before signing the bill of lading, ought to ascertain whether the bags or bales are strong and in good order; and if they are not, he ought so to state it in the bill of lading, or at least he ought not to sign a bill which states that the goods are shipped in good order and condition, as he may thereby render both himself and the ship-owners liable.

Special Cargoes.—Molasses, and other liquids in large casks, should be stowed in the ground tier, the bilges being at least one inch free; and the chimes should be kept free as well as the bilges. Four beds should be put under each hogshead containing one hundred gallons, if there is to be more than one tier. There should never be more than three tiers in the hold. All hogsheads should be securely quoined and chocked. Casks, in which liquids are brought from the Mediterranean, being usually stronger, less bedding is necessary. Those containing liquids should be stowed bung up, with bilges and chimes free; and, if between decks, aburden or athwartships, or they may, by the motion of the vessel, get slued bung down, and thus be liable to leak.

Dry Hides.—These require close dunnaging on the deck and up the sides, and the usual dunnage on the floor and in the bilge.

Crates of Ware—Suffer little or no damage from water; but they require to be closely stowed and well chocked, otherwise they will get loose, and the ware be broken; care must also be taken that heavy goods are not stowed upon them, and that they are not tumbled about and roughly handled, as they sometimes are by stevedores and others.

Naval Stores—Do not require dunnage, only chocking, and sometimes bedding and quoining to keep them from moving. Care to be taken that the barrels are in good order, and sufficiently strong. No vessel ought to go to sea with a cargo of tar or turpentine, without having one or more barrels of spirits of turpentine on board, to use in the pumps in case of leakage.

Bar and Railroad Iron.—Little or no dunnage is necessary for the protection of these articles, except in the bottom and bilges. Dunnage is, however, put up the sides, and on the decks, to prevent the iron from chafing the ship.

Salt in Bulk.—This article requires no dunnage except in the bottom; mats, however, are usually placed up and down the sides to prevent the salt from wasting; sometimes laths or strips of boards are put over the seams for the same purpose; a cargo of this description requires good shifting boards; it is a bad cargo for a ship, as it is difficult to get it high enough without having too much in the centre of the ship.

Salt in Bags—Requires a continuous floor of dunnage to keep it dry.

Hemp.—Russia and American hemp is usually packed in loose bales, and require the vessel to be closely ceiled on the deck and up and down the sides; mats are usually put over the ceiling the more effectually to keep out the water.

Manilla Hemp and Sugar.—These are so closely packed that the dunnage on the deck and up the sides may be three or four inches apart;

bamboo is commonly used up and down the sides, and rattan in other places.

Pepper in Bulk.—Little attention is paid to dunnaging this article, as there is not much danger of its being injured by water; it is said that water is frequently sprinkled on it to lay the dust which rises, when the hands are trimming it. All ships trading on the coast have their ballast platformed down and bulkheads up, so that the water cannot get to the pepper from the bottom.

Pepper in Bags—Only requires sufficient dunnage to keep the bags from getting wet and rotting, so that the pepper may not be lost.

Lemons, Oranges, Raisins, and Figs, in Boxes or Drums—Should be kept dry; they require the usual dunnage, and free circulation of air.

Lumber—Should be closely stowed, so as not to be moved by the rolling of the vessel; it frequently happens when this is neglected that the lumber sags to the leeward when the vessel first goes to sea and gives her a heel that way. Great care should be taken in stowing the deck loads to see that they are well chocked and secured down, for if the lumber gets loose the lives of the crew, as well as the safety of the vessel and cargo, will be endangered.

Coal—Is not damaged by water; neither is it easily shifted; it is advisable, however, for vessels employed in this trade to have shifting boards.

Ballast.—It is always advisable to procure ballast that is dry and clean, free from dust and filth, and in no case should it remain in the hold of a vessel more than a year without being picked over and cleaned from dirt and filth; it is well to throw salt on the ceiling before the ballast is put down, as this, as well as assorting and cleaning the ballast, tends to keep the wood cool, and to preserve it. Many a fine ship has been nearly ruined by the neglect of those in charge to take proper care of the ballast; in some instances the ballast has been suffered to remain two or three years without examination, and when removed the ceiling and timbers have been found rotten, caused undoubtedly by the ballast.

Pumps.—Some improvements have recently been made in the boxes and brakes of vessels' pumps; our ships, both large and small, are, however, more deficient in this than in any other particular. It is to be hoped that something may be devised to take the place of the pumps now in use, requiring less labor from the crew. Bilge pumps are found to be of much service in ships having full bilges, and if proper care is taken in putting them in, there is no reason why they should not work well.

Blowing.—This is the nautical term used when the water is forced up through the seams and the bilge by the rolling of the vessel—the bilge-water flying from side to side through the ceiling, injuring the goods, notwithstanding they are properly dunnaged. Serious losses have happened to goods from "blowing," and it is yet a question upon whom such losses shall fall. If, however, it has been occasioned by the neglect of the master or owners to have laths or strips of boards nailed over the seams, or the bilges caulked up, which last ought always to be done, the loss would probably fall upon the shipowners. "Blowing" occurs most frequently in vessels with flat floors and round bilges.

Keeping the Ship Tight.—It is the duty of the master to see that the vessel is tight and staunch, and furnished with everything necessary for the voyage; and, if in a warm climate, before sailing to ascertain if her top-sides require to be caulked.

Note.—See Laws relating to the reception and stowage of the cargo on pages 77, 78

A MAN OVERBOARD.

If the ship be going free and fast, bring to with the head-yards aback. If the main-yard be left square, the ship will be longer coming to. If blowing fresh right the helm in time, or the ship will fly-to too much, gain sternway, and endanger the lowering of the boat. If possible, the ship should not only be hove-a-back, but brought around on the other tack, sail shortened in stays, and main-yard kept square, that is, if the ship be on a wind, or have the wind not above two points abaft the beam. If the evolution succeed, the ship, when round, will drift towards the man. It is seldom expedient to lower the boat until the ship be well round and the sternway has ceased.

DIRECTIONS FOR RESTORING TO LIFE PERSONS APPARENTLY DROWNED.

When a person has remained under water for fifteen or twenty minutes, he is suffocated for want of air, and the face appears swelled, and of a livid purple, from the stoppage of the blood in the veins.

In rare instances, recovery has been effected after longer submersion than twenty minutes. The heat of the body, and the clearness and motion of the pupils of the eyes, are the chief symptoms of life. As death does not ensue from water rushing into the windpipe and lungs, according to vulgar opinion, but from the want of air, it is most absurd to hang up the body by the heels, as is often ignorantly done, to let water run out; for little or no water is swallowed in drowning.

Treatment. — The body must be carefully removed, laid on the right side, on a plank, with the head rather raised, and without jolting, to the nearest house, or to a warm and dry situation. When the weather is warm, have the windows open; when cold, have a good fire. If the body is to be carried far, it must be quickly stripped, rubbed dry, and covered with the spare clothes of the bye-standers, to prevent evaporation, and the cold which this would occasion. To restore heat, place it between warm blankets, and keep up the temperature, by application of *dry* heat, in every possible way. Water extinguishes life as it does fire, by keeping off the air; therefore, restoring air to the lungs by inflation, is the means most to be relied upon, and should be commenced without a moment's delay, and continued, perseveringly, during several hours. This is best accomplished by pressing the tongue of the patient downwards and forwards, and passing a small curved tube into the windpipe, and attaching a pair of bellows to it; or, in the absence of these, an assistant must blow into it, to distend the lungs, which may then be emptied by pressing on the chest or belly; expedients which should be done alternately, so as to imitate natural respiration. If oxygen gas could be used instead of common air, it would be much preferable.

Frictions with warm flannels, ought to be going on the while, and stimulating vapours may applied to the nose. Warm injections (*enemata*) of salt and mustard, or of brandy and water, may be thrown up into the bowels, and warm spiced wine, or weak brandy and water, got into the stomach, by means of a flexible pipe and syringe; but this is not to be attempted without such assistance, till the patient can swallow.

Recovery. — The first signs of returning animation are, sighing, gasping, convulsive twitchings of the limbs, and slight pulsation of the heart. When these symptoms make their appearance, the efforts, instead of being remitted, should be redoubled, for four or five hours, since all danger is not yet passed; many having perished, from neglect, in the after-treatment. These favorable appearances ought, therefore, to be encouraged, by giving, occasionally, as the person will now be capable of swallowing, a spoonful of wine, and a little food of the lightest description. The sufferer should also be placed in a warm bed, and should enjoy the greatest tranquillity.

REMEDY FOR THIRST

Economists and misers well know, that "to save is to gain," and on this principle, by applying cold water to the skin you stop the pores and diminish perspiration; even dipping the hands in cold water has often an instantaneous effect in quenching thirst. At sea, this is of the utmost consequence when water becomes scarce; bathing in salt water being the best remedy for the torments of thirst. Great draughts of liquor are thought to be very injurious, as this only deluges the stomach without quenching thirst; which is more effectually accomplished by taking the liquor in mouthfuls only.

THE

MERCHANT'S, SHIPMASTER'S,

AND MECHANIC'S ASSISTANT:

Being the Third Edition of the "Merchant's and Mechanic's Assistant," Enlarged by the addition of

THE ART OF SAILMAKING; BOOK-KEEPING, AND METHOD OF KEEPING A SHIP'S ACCOUNTS.

BOSTON, — PUBLISHED BY I. R. BUTTS.

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BRIEF SUMMARY OF ITS CONTENTS.

TABLES showing the Length, Breadth, Depth, and Tonnage of over 6000 Single and Double Decked Vessels, from 40 to 2682 Tons.

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Plans for Masting and Sparring Ships in United States Navy. (*See also in Supplement "New Plan for Sparring Ships."*)

Rules for Drawing Plans for Cutting Rigging, and Measuring Yards.

Rule for Drawing Plans for Sails. Areas of Sails.

Table of the Centre of Effort, and Definition.

Table showing the Power of Wind on Sails with different Breezes.

Weight of Cubic and Cylindrical Inches and Feet of Water in Gallons.

Rules for measuring the Bottom and Side Surface of Vessels, in order to ascertain the Number of Sheets of Copper and Nails required in Sheathing.

Tables showing the Number of Sheets of Copper used in Sheathing 146 different sized Vessels.

Tables giving the number of Sheathing Nails to the lb.; Weight of Spikes and Bolts to the Foot; and Weight and Thickness of Copper, Yellow Metal and Zinc to the Sheet.

Table giving the Comparative Cost of Sheathing Vessels with Copper, Yellow Metal and Zinc; the length of time each metal will last; and the comparative Value of the old Metal, Nails &c.

Tables giving the Size and Weight of Anchors, suitable for Vessels from 5 to 2000 tons.

Tables giving the Size and Weight per Fathom, of Chains and Cables, suitable for Vessels from 5 to 2000 tons.

Tables giving the Size and Weight per Fathom, of Ropes, Cordage, Hawser, Manilla, &c. Comparative Strength of Wire and Hemp Ropes

for Rigging. Strength of Chains for Bobstays, Bowsprit Shroud, &c. Weight that Ropes will bear with safety.

[These Tables are valuable for Riggers, as they may save a day's work in computing the rigging of a Ship. They are also serviceable to Ship-Chandlers, Shipowners, Shipmasters, &c.]

FREIGHTER'S RULES AND TABLES.

Rule to ascertain the true Tonnage, or interior Capacity of any Vessel.—[*By S. H. Pook, Esq., Naval Architect.*.]

English Rule to find the Tonnage of Vessels.

Goods Proportioned in Stowage.—Tables giving the Quantities, in Numbers and Decimals, of nearly 100 Articles of Merchandise, their Weight, and Space required for Stowage. — After the actual Tonnage of the Vessel has been found by the preceding Rules, this Table will determine how many Hogsheads, Barrels, Bales, &c., she can stow. Or, if a number of Barrels of Flour fill a space equal to a certain number of Cubic Feet, or Tons, then how many Hogsheads of Sugar, Tons of Hemp, Bales of Cotton, Tons of Wool, Dried Skins, Hogsheads of Tobacco, or any other article of Merchandize will Stow in the same Space. [This and the following Tables, are of great value to the Shipmaster, Charterer and Stevedore.]

Tables of the Weight of the following Articles, the bulk of which compose a Ton:—Coffee in casks, Coffee in bags, Cocoa in bags, Pimento in casks, Dry Hides, Raw Silk, Teas, Ship Bread, in bulk and casks, Grain, Pease, and Beans, in casks, Grain in bulk, Salt, Coal, Tobacco. Articles the Weight of which equal a Ton of Pig and Bar Iron, Potashes, Sugar, Logwood, Fustic, Nicaragua Wood, and heavy Dyewoods, Rice, Honey, Copper Ore, and all other heavy articles, Coffee, Cocoa, and Dried Cod-fish in bulk and in casks. Gallons equal to 1 Ton of Oil, Wine, Brandy, or other Liquids. Cubic Feet of Mahogany, Timber, Plank, Boards, Furs, Peltry, Wax, Cotton, Wool, and Bale Goods to a Ton. Number of Barrels equal to 1 Ton of Flour, Beef, Tallow, Fish, Tar, Pitch, &c.

Tables of the number of Cubic Feet required to Stow a Ton in weight of any Metal, Granite, Stones, Slate, Millstones, Coals, Woods, &c.

Tables of Weight and Measurement of India, Canton, and Malaga Goods.

Table of the Weight and Measure of various Articles of Merchandize.

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Ullaging Casks (finding the ins or outs) in Imperial and U. S. Measures.

Table of the Comparative Value between the U. S. (Winchester) and the present British (Imperial) Measures for Wine, Spirits, Ale, &c.

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Time Table and Rules for Finding the Average of different Payments.

Table giving the Comparative Prices of Pounds and Tons.

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Standard Weights and Measures:—Measures of Weight, Measures of Surface Measures of Capacity, (dry,) Measures of Capacity, (liquid,) Measures of Length, Measures of Solidity, Weight of a Bushel of various Articles, Weight of a Gallon of Water, Oil, and other articles, English and French Measures of frequent reference, &c.

EPITOME OF MENSURATION.

To find the Square Feet in Board, Plank, Marble, Walls, &c., and the Solid Contents in Timber, Frustrums, Cones, &c.; the Circumference of a Circle from the

Diameter; the Areas of Cylinders, Grindstones, &c.; the Capacity in Gallons of any Cylindrical or Square Measure: the Cubic Feet in Timber, Stone, Boxes, Bins, &c.

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A *series* of Tables showing the number of *Superficial Feet* in Board, Plank, Scantling, and Timber; the number of Feet of Standard Board in Logs; the *Cubic Feet* in Timber, Masts, Spars, Logs, &c.; the Diameter and Cubic Feet in Logs corresponding to *one-fourth Girt;* Comparative Weight of Woods; English Carpentry, and Measures and Quantities.

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Elastic Force of Steam. Table for finding the Consumption of Coal per Hour in Steamers. Table showing the Evaporative Power of Coal—giving the kinds of Coal, Power, of Steam raised from 1 lb. of Coal.

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Table of Areas of Circles; Guaging Cylindrical and Square Vessels, and Cones; Table of 34 *Brands of Tin Plate*, Sizes, Weight and Number; Canisters from 2½ to 125 Gallons with quantity and quality of Tin; Capacity of Cans from 3 to 40 inches Diameter; Diagram, by which to construct any *flaring vessel;* Areas, Diameters, and Circumferences of Ovals; Diagram of *Sector* from which Angles may be obtained; Rule with Diagram to find the various Angles and proper Dimensions of Materials, whereby to Construct any Figure whose form is the Frustrum of a Proper or Inverted Pyramid, as Millhoppers, Hipped Roofs, &c.; Rules with Diagrams to obtain the Contents of any Frustrum; Rule, with Diagrams, for Striking out Cones and Frustrums.

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Dear Sir,—Having used your Book, I should say, unhesitatingly, that the information contained in it is of great value to the Shipowner and Shipbuilder. The Tonnage Tables are remarkably correct, and have saved me an immense number of figures.

FROM CAPT. R. B. FORBES, BOSTON.

Dear Sir,—I have great pleasure in recommending your "Merchant's and Mechanic's Assistant," as a valuable book of reference for the counting-room.

FROM CAPT. JOHN S. SLEEPER, BOSTON.

Dear Sir,—I have carefully examined the work you have just published, entitled "The Merchant's and Mechanic's Assistant," and regard it as a most valuable publication, prepared with great care, and relating to subjects of great importance to the Merchant, the Shipmaster, and Mechanic. As a work of reference it must be invaluable.

FROM CAPT. GEO. H. FOLGER, BOSTON.

Dear Sir,—I have examined with some care, the valuable work you have just published, entitled, "The Merchant's and Mechanic's Assistant," and consider it a most useful compilation of statistical information for *Merchants*, *Shipmasters*, and *Mechanics*.

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